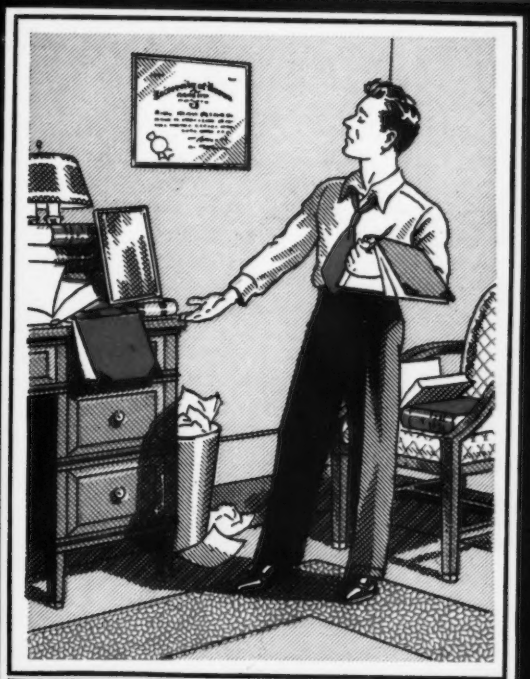
CASE AND COMMENT



REHEARSING THE FIRST CASE—
"May It Please the Court"

VOL. 45 MAY * 1940 NO. 6

34 Years After WE REPEAT

A GRATEFUL ACKNOWLEDGMENT TO AN HONORABLE PROFESSION

N April 18, 1906, the date of the great fire, the legal fraternity of this country was indebted to us in a sum in excess of $200,000. The fire destroyed all of our books of accounts. ■ The lawyers of San Francisco having lost their entire libraries were absolved of their indebtedness to us, amounting to about $30,000. This left an amount due from outside lawyers of from $170,000 to $175,000. Having no lists of patrons, we sent a circular letter to the lawyers named in Martindale's Legal Directory, advising them of our loss and asking for information as to their indebtedness to us.

■ The responses to this circular were so prompt and so gratifying that we think the legal profession should know that of this total indebtedness of say $175,000, nearly $150,000 has already been reported to us, and we are receiving advices every day from parties who had not previously answered our circular asking about their indebtedness.

■ It is but right to say that some of the San Francisco attorneys declined to accept the cancellation of their accounts and have paid same. Let it be known to the world that the legal profession is made up of men of the highest honor.

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The Jolly Testator Who Makes His Own Will

AN OLD ENGLISH BALLAD

Ye lawyers who live upon litigants' fees,
And who need a good many to live at your ease;
Grave or gay, wise or witty, what-e'er your degree,
Plain stuff or Queen's Counsel, take counsel from me;
When a festive occasion your spirit unbends,
You should never forget the profession's best friends;
So we'll send round the wine, and a light bumper fill
To the jolly testator who makes his own will.

He promises his wish and his purpose to save
All dispute among friends when he's laid in his grave;
Then he straightway proceeds more disputes to create
Than a long summer's day would give time to relate.
He writes and erases, he blunders and blots,
He produces such puzzles and Gordian knots,
That a lawyer intending to frame the thing ill,
Couldn't match the testator who makes his own will.

Testators are good, but a feeling more tender
Springs up when I think of the feminine gender!
The testatrix for me, who, like Telemaque's mother,
Unweaves at one time what she wove at another;
She bequeaths, she repeats, she recalls a donation,
And ends by revoking her own revocation;
Still scribbling or scratching some new codicil,
Oh! success to the woman who makes her own will.

'Tisn't easy to say 'mid her varying vapors,
What scraps should be deemed testamentary papers
'Tisn't easy from these her intention to find,
When perhaps she herself never knew her own mind.
Every step that we take, there arises fresh trouble:
Is the legacy lapsed? Is it single or double?
No customer brings so much grist to the mill
As the wealthy old woman who makes her own will.

The law decides questions of meum and tuum,
By kindly consenting to make the thing suum;
The Aesopian fable instructively tells,
What becomes of all oysters, and who gets the shells;
The legatees starve, the lawyers are fed;
The Seniors have riches, the Juniors have bread;
The available surplus of course will be nil,
From the worthy testators who make their own will.

You had better pay toll when you take to the road,
Than attempt by a by-way to reach your abode;
You had better employ a conveyancer's hand,
Than encounter the risk that your will shouldn't stand,
From the broad beaten track when the traveler strays,
He may land in a bog or be lost in a maze;
And the law, when defied, will avenge itself still,
On the woman and the man who make their own will.

WHY BAR MEMBERSHIP FOR THE YOUNG ATTORNEY

By GEORGE RICE BUNDICK [1]

WHATEVER the mask behind which the young lawyer likes to hide his purpose in entering the legal profession, there was behind it an objective of leadership and social service. No other prerogatives of the legal profession could repay him for the long years of hard work and the ordeals of bar examinations. Lawyers were and will be the leaders of our national economic and political movements whether you call them advocates or use the deriding term "mouthpiece." Lawyers voice the orderly movement of social forces and direct these forces towards the goal of equal justice under the law.

With admission to the bar an achievement, the young lawyer faces a period of adjustment when new objectives must be defined and a program definitely prepared in order that the fruits for which he is qualified may be secured in full measure.

Curiously enough one of the most pressing tasks of the bar association at the present writing, is the maintenance of the prestige of the profession. Here the young lawyer faces the necessity of fighting for benefits he has already obtained. The legal profession cannot remain blind to the fact that there are those who take pleasure in decrying lawyers and who would place a crown of thorns on all lawyers, predicting dire things for the profession, blindly unaware that with the elimination of lawyers from our midst, there would be a loss of painfully won rights, including the right of disparagement, which they so vigorously use.

Individual lawyers alone can do little to stem this tide of popular disapproval. United into strong groups they can let the public know, not by what they profess, but by what they do, how great has been the contribution by the legal profession to our democracy.

Social movements, if they are to be directed in the proper channels, must be understood and sensed from group relationship rather than from individual conjectures. Bar Association membership offers the ideal contact point for this.

Apart from this social challenge, a bar association membership offers many advantages.

First, it offers the opportunity of friendly association with all lawyers. This is a value of the utmost importance when it comes at a time when young lawyers have the need for a source of strengthening help, and periods when they feel a need for reincarnation of ideals.

Second, bar associations offer through group and individual discussions a means of keeping up with the changes in the profession. The time has also gone when any lawyer can handle every case which comes into his office. In fact, one of the greatest services he renders his clients is in the selection of associate counsel in specialty fields. And only through association contacts can he secure information as to the specialists to whom he can entrust his clients' cases when the occasion arises.

Closely akin is the opportunity the bar associations offer through interchange of ideas as a medium of learning new techniques and changes in the practice of law. By way of illustration, it is entirely probable that a large part of the future lawyer's prac-

[1] Editor-in-Chief, CASE AND COMMENT.

tice will be before boards and commissions. This change alone demands a slowly evolving technique and procedure lawyers must learn together as they pioneer in this startling new field of practice.

Thirdly, the bar association offers a forum for discussion where the errors of the past may be frankly discussed and action taken to avoid those errors. Too long, has proposed legislation been left to legislatures when it should first be worked out by lawyers who know and not by legislators with a yen for bill making. One of the most hopeful signs comes from the many association committees which are earnestly seeking the necessary procedural reform on both state and national fronts.

Fourthly, we should not overlook the bar association as a medium to promote unity in the profession as a place to uphold the high standards of the bar and as a place to mold the individual career. Some of your time should be devoted to tasks which are broader than your day's work. Bar association membership will compensate you well if you use it as a means of catching the spirit and purpose of professional work.

On the other side of the picture, what have you to offer in return for these advantages? Bar association membership is not a one-sided matter. The coming of younger men means much to the associations. A large part of the enthusiasm, the ideals and the energies of the bar associations come from the younger members. Your participation in bar association activities brings to your association an aroused spirit, a finer purpose and fresher ideals.

A former President of the American Bar Association, Frederick H. Stinfield, has well stated the tasks which lie before State and National associations.

"We have heard much about the decline of the bar in the opinion of the public. You and I know that as between ourselves and our individual clients, this is not so. Every day, in every town and city of this country, men and women are putting their affairs in the hands of their lawyer, with complete trust and with the knowledge that they will get the full measure of service which their chosen lawyer can give and his whole-hearted devotion to their interests. To drive home the truth that the bar as a whole is composed of these individual lawyers who are trusted as individuals, is one of our tasks as an organized group. We all know that we must make admission to the bar a prize to be awarded only to those who are well qualified to serve the public; that we must divorce our judges from politics and political influences; that we must speed up and make more efficient the operation of our courts; improve the enforcement of criminal law; make our machinery of disciplinary procedure more effective, and protect the public from unauthorized practitioners.

"We know we can do these better when we work together and the new possibilities in united action on a National scale are limitless.

"But don't forget that with these new benefits, new duties are also imposed. You have a responsibility to interest and inform yourselves as to what the bar is doing and to give your knowledge and skill in framing the best plans for improvement in these fields."

Young man, join your local bar association now and the American Bar Association as soon as possible.

BOSWELL, BARRISTER[1]

By EPHRAIM E. SINN[2]
New Haven Bar

(Reprinted from October 1934 Bulletin of New Haven Bar Association)

> *By falling in with his* [his father's] *schemes I make him easy and happy, and I have a better prospect of doing well in the world, as I will have no uphill work; but all will go smooth.* Boswell to John Johnston (æt. 23).
>
> *I get bad rest in the night, and then I brood over all my complaints—the sickly mind which I have had from my early years—the disappointment of my hopes of success in life—the irrevocable separation between me and that excellent woman who was my cousin, my friend, and my wife—the embarrassment of my affairs—the disadvantage to my children in having so wretched a father—nay, the want of* absolute certainty *of being happy after death, the sure prospect of which is frightful.* Boswell to Temple (æt. 51).

JAMES BOSWELL, ESQ., commenced the practice of law at Edinburgh with every advantage that a young lawyer could possibly desire.[3] He was heir to the ten mile manorial estate at nearby Auchinleck which had been bestowed by royal grant on the founder of the family. Almost six hundred people acknowledged Lord Auchinleck as their feudal master. Robert Bruce was one of his ancestors.[4] The family's influence assured

[1] The first part of this article, with special stress upon Johnson, appeared in the May, 1934, issue of the BULLETIN.—ED.

[2] Mr. Sinn's companion article "Johnson Jurisconsult" was published in the Jan. 1939 issue of CASE AND COMMENT.

[3] To dispense with the cluttering distraction of multitudinous foot-notes, it may be well to acknowledge my authorities at the outset.

Since Professor Chauncey B. Tinker of Yale collected and edited the *Letters of James Boswell*, 2 vols. (1924), no commentator can discuss any phase of Boswell's life without acknowledging his debt to this distinguished scholar. The article *James Boswell* in the fourteenth edition of the *Encyclopaedia Britannica* is largely drawn from these letters. Lytton Strachey's essay in *Portraits in Miniature* (1931) was inspired by this same source. Dr. J. T. T. Brown's address, printed in the *Transactions of the Glasgow Archaeological Society*, New Series, Vol. VII, part II (1920), is useful.

Young Boswell (1922) by Professor Tinker is informative, and its sympathetic analysis of Boswell's character is in accord with John Bailey's excellent book, *Dr. Johnson and His Circle* (1913). A. Edward Newton's chapter on Boswell in *The Amenities of Book-Collecting* (1920) is written with its author's customary charm. Of three recent studies, *Dr. Johnson and Mr. Boswell* (1929), by Harry Salpeter, *James Boswell* (1933) by C. E. Vulliamy, and *Samuel Johnson* (1934) by Hugh Kingsmill, I consider the first the most meritorious. Vulliamy has the fanaticism of an embittered moralist and Kingsmill questions Boswell's auctorial accuracy and honesty, virtues grudgingly conceded even by Macaulay's biased criticism. Mr. T. B. Simpson's article on *Boswell as an Advocate*, to which reference has already been made (note 20), is principally valuable for the information based on Boswell's *Consultation Book*.

It is surprising that no American candidate for the doctorate, equipped with a background of legal knowledge, has written a full account of Boswell's career as a lawyer. Such a study would not only be an invaluable contribution to *belles lettres*, but the incidental comparison of the Scottish system of jurisprudence with our own would be of profound professional interest. The completion this year of the publication of the *Private Papers of James Boswell from Malahide Castle*, from the collection of Col. Isham, edited by Professor Frederick A. Pottle, of Yale, privately printed in a limited edition, 18 vols. to the set, reveals an untapped mine of the richest material, affording almost an unique opportunity for the enterprising scholar.

[4] The name was originally Boisville, suggesting Gallic descent. Boswell's great-grandmother was a Sommeldyck, of a noble Dutch family residing at The Hague. Had his

him of immediate employment. He could boast of exposure to the best professional instruction. "Boswell," Dr. Johnson was later to say of him, "is a man who I believe never left a house without leaving a wish for his return." A personality so irresistibly appealing attracted clients. To the prestige which his father's judicial office brought him, reference has already been made.

The difference in temperament between father and son led, unfortunately, to an early estrangement which was to continue to the judge's dying day. Boswell's opposition to his father's second marriage exacerbated their relations. The young man's bacchanalian conviviality and inability to emulate his father's single-minded devotion to the law further widened the breach between them. Lord Auchinleck was a stern Presbyterian, and Boswell was persuaded by Johnson's example to become an adherent of the Church of England; the father was a Whig, the son, a Tory.[5] The dour old gentleman disapproved of his son's jaunts to London as idle and extravagant. Lord Auchinleck's keen relish for the classical writers of ancient Rome and Greece was united with a contempt for contemporary literature: to him Dr. Johnson was a *brute* and his son's unending peccadilloes cast a doubt on the beneficent influence of that reputed moralist.

Boswell's *Consultation Book*, written in his own hand, is one of the treasures of the Advocates' Library in Edinburgh. This record of his fees seemingly reflects rapid advancement during the first few years of Boswell's career. The very first day of his practice he earned one guinea, and two the following day. By the end of the first year he had made—and unquestionably spent—165 guineas. The second year his fees had increased to 191 guineas. The third year was about the same. The fourth year there was a decline to 123. But the year following his income reached the joyful heights of 258½. The sixth year it came to 207. These details I hope the reader, to whom the pecuniary rewards of the profession are merely incidental, will not have found unduly tedious.

An insight into Scottish procedure may be gained by the following letter which Boswell wrote not many months after his admission to the Bar:

> I am at present leading the strangest life. You know one-half of the business before the Court of Session is carried on by writing. In the first instance, a cause is pleaded before the Lord Ordinary, that is to say one of the fifteen judges who sits in his turn for a week in the Outerhouse. But no sooner does he give judgment than we give him in representations and answers and replys and duplys and triplys, and he will sometimes order memorials, to give him a full view of the cause. Then we reclaim to the Innerhouse by petition, and there again we give in a variety of printed papers, from which the Lords determine the cause. For it is only in causes of great consequence that the Court orders a hearing in presence. This method of procedure is admirable, for it gives the

father not intervened, Boswell would have followed his forebear's example by marrying the Dutch girl whom he had loved in his Utrecht days.

[5] Dr. Johnson, on his visit to Scotland, was introduced to Lord Auchinleck. Before their meeting Boswell begged his guest to abstain from all political and religious discussion. Unhappily, an innocent reference to Oliver Cromwell started a controversy which became increasingly warm and violent. Wrote Boswell in *The Journal to the Hebrides* (pg. 320 f):

> "Notwithstanding the altercation that had passed, my father, who had the dignified courtesy of an old Baron, was very civil to Dr. Johnson, and politely attended him to the post-chaise, which was to convey us to Edinburgh.
>
> "Thus they parted.—They are now in another, and a higher, state of existence: and as they were both worthy Christian men, I trust they have met in happiness. But I must observe, in justice to my friend's political principles, and my own, that they have met in a place where there is no room for *Whiggism*."

judges a compleat state of every question and by binding up the session papers a man may lay up a treasure of law reasoning and a collection of extraordinary facts.[6]

The young lawyer wrote glowingly of his progress to his life-long friend Temple

> It must be confest that our Court of Session is not so favourable to eloquence as the English courts. Yet the Outerhouse here is a school where a man may train himself to pretty good purpose. I am surprised at myself. I allready speak with so much ease and boldness, and I have allready the language of the Bar so much at command. I have now cleared 80 guineas. I am kept very throng.[7] My clerk comes to me every morning at six, and I have dictated to him 40 folio pages in one day. It is impossible to give you an idea of my present life. I send you one of my law-papers and a copy of my thesis.[8] I am doing nobly. But I have not leisure for learning. I can hardly even answer the letters of my friends. . . . It is very odd that I can labour so hard at law when I am so indolent in other things.

Boswell's enthusiasm for the embattled Corsicans did not abate upon his return from the Continent. He succeeded in raising subscriptions for the purchase of ordnance which was sent to aid the rebellious subjects of Genoa. He was delighted with the sobriquet, Corsican Boswell. In 1768 his *Journal to Corsica* was published. It met with instantaneous success. Translations were immediately made into the foreign lauguages of Europe. Even today it is better known on the Continent than is Boswell's *magnum opus*. An English statesman—for by such dignity does posterity enshrine the memory of its politicians—averred that the country had come to the brink of war because Mr. Boswell had written an entertaining account of the Corsicans. (It may be taken as a sign of divine approval, if I may interpolate, that every war which the English have idealistically waged in behalf of oppressed minorities has been followed by commercial advantages, to which only the irreverent can possibly object.) The applause which this book brought to the young lawyer intoxicated him more than did his wine. It gave him, at the age of twenty-eight, what he had desired most in life: literary fame. And it made him disgruntled with drudgery, a concomitant of every lawyer's practice, and impatient of success which the law seldom grants to youth. London was more appreciative of his merits than was provincial Edinburgh, and it was towards the metropolis that Boswell's yearning eyes were more and more to turn.

The decade following the *Journal to Corsica* witnessed the slow but ever accelerating decline of his practice. Vices, uncurbed by industry, grew overpowering. "When unoccupied," he wrote to Dr. Johnson of a novel dilemma, "I grow gloomy, and occupation agitates me to feverishness." The Scotsman had what he himself termed an atrabilious temperament. The melancholy which oppressed him in solitude could only be dissipated by the gaiety of society. Every pleasure Boswell embraced, he embraced whole-heartedly. Addiction to drink made him a dypsomaniac in his early thirties, and visits to the "mansions of gross sensuality" were followed by less blithesome calls at the humbler

[6] Boswell elsewhere bewailed that devotion to the involved procedure hastened his father's death. But it may be questioned whether the labors of a Scottish judge, working in the quiet of chambers and presumably fortified by the famed beverage of that locale, were more onerous than is the duty, to which our law condemns its judges, of listening solemnly to the interminable drone of counsel.

[7] Scottism, meaning busy.

[8] The allusion is to the thesis published, in accordance with Scottish custom, upon admission to the Bar. It is a practice which our law might well follow. A suggested topic would be the judicial construction of the concluding sentence of Sec. 5945, General Statutes (1930).

homes of physicians. Immoralities, urbanely practised and discreetly hidden, as Lord Chesterfield reminded his natural son, were not regarded as infirmities by that tolerant age; but Boswell's excesses were open, notorious, and disgusting. To these major vices was added the minor one of gambling. A more embittering evil than any of these was the remorse for his misconduct which came upon him in his more sober moments; and this affliction, which few men can withstand, led him to the solace of complete vinous forgetfulness; and so the vicious circle continued, ever enclosing his law practice within narrower limits.

The letters of this period indicate dissatisfaction with his professional engagements:

> The General Assembly is sitting; and I practise at its bar. There is de facto something low and coarse in such employment, though upon paper, it is a Supreme Judicature. But guineas must be had . . . I look forward with aversion to the dull labour of the Court of Session. You see, Temple, I have my troubles as well as you have.

The Rev. William Temple, to whom the following letter was also written, was a clergyman with a living in an obscure parish of England. His life was uneventful; the dullness of his affairs was transmitted to a tome of historical essays which was ignored by his own, and wisely forgotten by succeeding generations. Boswell, inexplicably, was genuinely fond of him:

> When harassed and fretted with Court of Sessions business, when vexed to think myself a coarse labourer in an obscure corner, I get into good humour again by recollecting that I am Temple's most intimate friend; that Temple, who knows me perfectly, thinks of me as I know you do. No doubt the practice of the law here is sometimes irksome to me. But it is often a kind of amusement. I have to consider and illustrate *quicquid agunt homines.* I have to treat of characters, of the history of families, of trade and manufactures, as contracts concerning them are the foundations of many lawsuits; in short, the variety of subjects of which fragments pass through my mind, as a pleader, engages my attention, and, as upon most occasions, I become warmly desireous of my client's success, there is the agitation of contest, and sometimes in a certain degree the triumph of victory. But there is also sometimes the discouragement of defeat.

With the opinion expressed recently by Mr. Vulliamy that the wasting away of Boswell's law practice prompted him to begin anew in London, I find myself, regrettably, in disagreement. From his very first visit to the metropolis, Boswell had returned to Edinburgh convinced of the narrow provinciality of his native city. To Temple he wrote as early as 1761: "Yoke a Newmarket courser to a dung-cart, and I'll lay my life on't, he'll either caper and kick most confoundedly, or be as stupid and restive as an old, battered post-horse." His father's death in 1782 removed the main obstacle to his long-deferred plans. Dr. Johnson's death two years later strongly impelled him to move, for the collection of the materials for the *LIFE,* outside of the notes he had accumulated through the years, could be made only in London. *The Journal to the Hebrides* appeared in 1785. He was admitted to the English Bar in 1786. The *LIFE OF JOHNSON* was not published until the sixteenth day of May, 1791, marking the twenty-eighth anniversary to the day of their first meeting.

During the very year that Johnson died, Boswell sounded his friend on the proposed move:

> During our visit at Oxford, the following conversation passed between him and me on the subject of my trying my fortune at the English bar: Having asked whether a very extensive acquaintance in London, which was very valuable, and of great advantage to a man at large, might not be prejudicial to a lawyer, by preventing him from giving sufficient attention to his business;—JOHNSON. "Sir, you will attend to business, as business lays hold of you. When not actually employed, you may see your friends as much as you do

now. You may dine at a Club every day, and sup with one of the members every night; and you may be as much at publick places as one who has seen them all would wish to be. But you must take care to attend constantly in Westminster-Hall; both to mind your business, as it is almost all learnt there, (for nobody reads now;) and to shew that you want to have business. And you must not be too often seen at publick places, that competitors may not have it to say, 'He is always at the Playhouse or at Ranelagh,[9] and never to be found at his chambers.' And, Sir, there must be a kind of solemnity in the manner of a professional man. I have nothing particular to say to you on the subject. All this I should say to any one; I should have said it to Lord Thurlow twenty years ago."

THE PROFESSION may probably think this representation of what is required in a Barrister who would hope for success, to be by much too indulgent; but certain it is, that as "The wits of Charles found easier ways to fame," some of the lawyers of this age who have risen high, have by no means thought it absolutely necessary to submit to that long and painful course of study which a Plowden, a Coke, and a Hale considered as requisite. My respected friend, Mr. Langton, has shewn me in the handwriting of his grandfather, a curious account of a conversation which he had with Lord Chief Justice Hale, in which that great man tells him, "That for two years after he came to the inn of court, he studied sixteen hours a day; however (his Lordship added) that by this intense application he almost brought himself to his grave, though he were of a very strong constitution, and after reduced himself to eight hours; but that he would not advise any body to so much; that he thought six hours a day, with attention and constancy, was sufficient; that a man must use his body as he would his horse, and his stomach; not tire him at once, but rise with an appetite."[10]

A number of years before, the same subject had been discussed:

As I meditated trying my fortune in Westminster Hall, our conversation turned upon the profession of the law in England. JOHNSON: "You must not indulge too sanguine hopes, should you be called to our bar. I was told, by a very sensible lawyer, that there are a great many chances against any man's success in the profession of the law; the candidates are so numerous, and those who get large practice so few. He said, it was by no means true that a man of good parts and application is sure of having business, though he, indeed, allowed that if such a man could but appear in a few causes, his merit would be known, and he would get forward; but that the great risk was, that a man might pass half a life-time in the Courts, and never have an opportunity of shewing his abilities."[11]

But if Boswell's practice in Edinburgh had fallen to discouraging levels, it at least was sufficient for subsistence; in London, he was a total failure. The loss of his wife, added to other miseries, provided another excuse for indulgences. He could no more apply himself to the English law than he had to the civil law of Scotland. The buoyancy of youth had been succeeded by premature old age, induced by lifelong excesses. Only the gentle pressure of Edmund Malone kept him from forsaking preparations for the *Life*.

As usual, he relieved his grief by writing to the sympathetic Temple:

I am in a most *illegal* situation; and for *appearance* should have cheap chambers in the Temple, as to which I am still *inquiring;* but in truth I am sadly discouraged by having no practice, nor probable prospect of it. And to confess fairly to you, my friend, I am affraid that were I to be tried, I should be found so deficient in the *forms*, the *quirks and the quiddities* which early habit acquires, that I

[9] Ranelagh was a pleasure park in London, frequented by the fashionable.

[10] *Life*, Vol. II, pg. 562 f.

[11] *Life*, Vol. II, pg. 137 f. Boswell's foot-note follows:

Now, at the distance of fifteen years since this conversation passed, the observation which I have had an opportunity of making in Westminster Hall has convinced me, that, however true the opinion of Dr. Johnson's legal friend may have been some time ago, the same certainty of success cannot now be promised to the same display of merit. The reasons, however, of the rapid rise of some, and the disappointment of others equally respectable, are such as it might seem invidious to mention, and would require a longer detail than would be proper for this work.

should expose myself. Yet the delusion of Westminster Hall, of brilliant reputation and splendid fortune as a barrister, still weighs upon my imagination. I must be *seen* in the courts, and must hope for some happy openings in causes of importance. . . . Could I be satisfied with being Baron of Auchinleck, with a good income for a gentleman in Scotland, I might no doubt be independent. But what can be done to deaden the ambition which has ever raged in my veins like a fever? In the country, I should sink into wretched gloom, or at best into listless dullness, and sordid abstraction. Perhaps a time may come when I may by lapse of time be grown fit for it. And yet I *really, from a philosophical spirit,* allow myself to be driven along the tide of life, with a good deal of caution not to be much hurt, and still flattering myself that an unexpected lucky chance may at last place me so that the prediction by a *fortunate* cap appearing on my head at my birth will be fulfilled.

Even after the publication of the *LIFE*—which to many of his contemporaries was a collection of impertinence and scandal—his outlook was still black. "I keep chambers open in the Temple," he wrote in despair to his friend, "I attend in Westminster Hall. But there is not the least prospect of my having business." He tried repeatedly to obtain political preferment; [12] even a deserving application for the diplomatic post in Corsica met with disfavor. Four years after the first edition of the *LIFE,* he died. He was in his 55th year.

[12] "I begin now to think that whatever administration should appoint you and me to good places would be the best." Boswell to Temple.

"David is a sensible, intelligent, accurate man," he wrote of his brother, "very formal and very prudent—in short, as different from me in his manner and in his general way of thinking as you can suppose. . . . But he is steady to business and his own interest, and no amusement will divert him from essential advantage. I hope he will do well in London. He says he will probably never make a great fortune, because he will not be adventurous. But he will get what he can by assiduity and œconomy. He told me that soon after settling in Spain he gave up all philosophising, and applied himself to real business. He says he found out that men who speculate on life, as you and I do, are not successful in substantial concerns. He is in the right, I am affraid."

Had Boswell possessed his brother's commendable traits, he might have become an advocate with an extensive and lucrative practice, and might even have succeeded his father on the bench; but it is equally quite certain that he would never have written the *Journal to the Hebrides* and the *Life of Johnson.* For those elements in his character which distressed his wife and embittered his father and finally wrecked his career as a lawyer, those elements, paradoxically—together with his genius—bestowed upon him, with *absolute certainty,* a life beyond life, and enabled him to bequeath to posterity a portraiture of his times, forever regaling and forever enriching

DEFINITION OF A GENTLEMAN

A GENTLEMAN *is a man who is clean inside and outside, who neither looks up to the rich nor down on the poor, who can lose without squealing, who can win without bragging, considerate to women, children and old people, who is too brave to lie, too generous to cheat and too sensible to loaf, who takes his share of the World's goods and lets other people take theirs.*

Contributor: W. H. WARREN, De Smet, S. D.

LINCOLN ON HIS LAST BIRTHDAY

By EMANUEL HERTZ

ABRAHAM LINCOLN'S last birthday on earth fell on a Sunday. No record survives to show that any notice of it was taken in the White House, or anywhere else. We know from the diary of Attorney General Edward Bates that "beautiful, moderate weather" prevailed, but Bates made no further entry and his fellow Cabinet members, Welles and Chase, found nothing to set down in their journals.

Lincoln himself left no written comment. We do find among his papers an order issued on that day which shows how little nearly 4 years of war had done to turn the Illinois lawyer into a military dictator. It went to Maj. Gen. John Pope in St. Louis, and it directed him to stop the practice of permitting military provost marshals in Missouri to seize the property of rebel sympathizers who had given bond for good behavior. "The courts and not provost marshals," Lincoln wrote, "are to decide such questions unless when military necessity makes an exception."

Probably Lincoln did not feel the lack of a birthday party, for despite continuing worries and some disappointments he had reason to believe that the war was coming to a victorious close. What hurt him most was the thought that lives must continue to be sacrificed after the military outcome was all but certain. In the past his generals had often made it hard for him to show mercy. Now in a few months, if all went well, there would no longer be a cruel "military necessity" to destroy.

Mercy was in Lincoln's mind on this last birthday. On that day he, who was to die on April 15 by the hand of a demented fanatic, pardoned a physician who had been held for some breach of wartime regulations. The man, he thought, was "partially insane." On that account "he should be discharged."

His deepest thoughts, the broodings of these final days and nights, we cannot fully know. We do know that they were not darkened by dread of approaching assassination. He sorrowed with North and South alike over the lives that had been spent and were to be spent, but he had no fear for himself. If risk had to be taken he, above all men, was ready to take it. The Commander in Chief, he must have reasoned, could not send other men to their deaths and take too much thought for his own safety.

To Ward H. Lamon he once said, "I long ago made up my mind that if anybody wants to kill me he will do it; if I wore a shirt of mail and kept myself surrounded by a bodyguard it would be all the same." To Col. Charles G. Halpine he spoke in the same vein: "It would never do for a President to have guards with drawn sabers at his door, as if he fancied he were, or were assuming to be, an emperor." He figured shrewdly, too, that the South would prefer a man known to be kindly in his feelings toward his enemies rather than the more belligerent Johnson, who would succeed him if he were killed.

So he faced this birthday saddened and worried by the frightful ordeal he had been through, yet beginning to see light ahead. The dawn was coming, just as he had seen it years ago breaking over the Illinois prairies—coming with the splendor of victory, but also, for him, with something far more important—peace, forgiveness, the beginning of a new friendship between the sections.

Lincoln wanted reconciliation with

all his heart. It is true that he would not accept a compromise which left any vestige of slavery intact, or which weakened the Union. He had made that plain and may have been reflecting on the sad necessity as he sat in the White House on this last February 12 he was to know.

First, he had urged his generals to an early victory. When Sheridan wrote him, "If the thing is pressed I think Lee will surrender," he had replied, "Let the thing be pressed." But he did not want to press into the mud the people of the South, whom he never ceased to look on as fellow Americans.

He had left no stone unturned. Nine days earlier he had gone to Hampton Roads, with Secretary Seward, to confer with three Confederate representatives on a possible truce. The three men were Vice President Alexander H. Stephens of the Confederate States, Senator R. M. T. Hunter, and Assistant Secretary of War John A. Campbell.

He must have chuckled a little, and sighed, as he thought of that conference. There was little Aleck Stephens, who had come wrapped up in two big overcoats. Lincoln remarked aside to Seward that Stephens was "the smallest nubbin that ever came out of so much husk." Good old Aleck, anyhow. He and Lincoln had been together in Congress years before. Lincoln had been moved, even to tears, by the Georgian's eloquence in those days. Aleck was the kind of man Lincoln might appeal to to help rebuild the South when the war was ended.

There had been informal and friendly talk, for in the midst of a frightful Civil War these old friends could not hate each other. Lincoln would have been thinking of what he had said to Stephens as they parted. "Well, Aleck, there has been nothing we could do for our country; is there anything I could do for you personally?"

Stephens had thought a while. "Nothing," he had said finally, "unless you can send me my nephew, who has been for 20 months your prisoner on Johnson's Island."

Lincoln wrote the name down—Lt. John A. Stephens. A moment later the two friends parted forever—though this could not be known to either of them. The big overcoats went on again and the little Georgian went back to Richmond and his lost cause. But Lincoln did not forget the imprisoned lieutenant. He had taken steps to get him out of prison, bring him to Washington, and send him home. He would see him, speak kindly to him, use him to prove to Stephens and the others that the northern government had something besides gall in its heart.

The conference had failed. Lincoln had to admit that. Lincoln had gone farther to make it a success than the public was to know for many years afterward. He had taken a sheet of paper and said to Stephens: "Aleck, you let me write the word 'Union' on top of this sheet and you may write whatever you wish below." Stephens verified this incident 17 years later at a dinner given when he was inaugurated Governor of Georgia—his last political honor. Both Col. Henry Watterson and the younger Clark Howell, present at the dinner, later confirmed what Stephens had to say.

But Stephens had his own word to write at the top of the sheet. That word was "independence." The slaughter of brother by brother had to go on until one or the other of these words was erased in blood.

Still Lincoln thought there might be a way out. He came back to Washington, and on February 5, just a week before his last birthday, he had made a proposal to his Cabinet. The thirteenth amendment, abolishing

slavery forever, had gone to the States on January 31 and had been ratified by Illinois on the following day. The northern Commonwealths were hurrying to get it into the Constitution.

Lincoln would not compromise with the principle of abolition. Yet he would soften the blow, for North and South alike. He had told Stephens his hog story, and must have smiled at the recollection. It was about the man who had a large herd of hogs, and to save the trouble of feeding them had planted a field of potatoes in which they could root. A neighbor pointed out that butchering time for hogs came in December or January, whereas the ground in Illinois froze a foot deep after the early frosts. "He scratched his head," said Lincoln, "and at length stammered, 'Well, it may come pretty hard on their snouts, but I don't see but that it will be root, hog, or die.' "

The South would have to root or die if its labor system were suddenly abolished, and the old system of property rights turned topsy-turvy. But the Lincoln who could tell this robust story longed to ease the transition. So, a week before his birthday, he had pointed out that the war was costing $2,000,000 a day and would, therefore, cost $400,000,000 if it dragged out for 200 days longer. Why not pay this sum to the South to compensate it for the loss of its slaves?

The Cabinet unanimously said no. Lincoln sadly entered an endorsement on the back of his proposal: "Today these papers, which explain themselves, were drawn up and submitted to the Cabinet and unanimously disapproved by them. A. Lincoln." Perhaps on this last birthday he took the packet out and looked at it. He longed so terribly for this shedding of blood to cease, this agony to pass.

But he would shake off the mood of despondency. He had work to do. He was looking ahead. Sooner or later—probably this year, 1865—the war must end. He had plans for reconstruction and was quietly building an organization which would help him to carry them out. He had been growing steadily toward the magnitude of that task. If he had sometimes been a hesitating, cautious Executive in 1862 and 1863 he was such no longer. He was sure of his powers and of his resources. He was using the gifts of a supreme politician to carry out statesmanlike projects. He knew that mountains had to be climbed by slow and laborious steps.

He had built up a political "machine" for the safety of the Union and the reconciliation of its people. Patiently, through endless days and nights, he had conciliated the political leaders of the North, giving them patronage where it would do the least harm in return for their support. He knew the best angle of approach to almost every man in public life, knew his whims, his special interests.

He meditated his plans. He could straighten out a number of things, big and little. He would send Secretary of State Seward to London as Ambassador and make that fiery enemy of slavery, Senator Charles Sumner, his successor. He could tame Sumner and teach him mercy and forgiveness. He had overcome Secretary of War Stanton's earlier hostility and changed it into idolatry. He could use Stanton: "it is not for you to decide when your duty to your country ceases," he had told the Secretary. Salmon P. Chase had been more of a problem as head of the Treasury, but Chase was safely removed from politics into the Chief Justiceship.

Lincoln had taken pains to conciliate the radical leaders in Congress who might ruin his plans for reconstruction—Colfax of Indiana, the hotheaded and bungling Ben Butler of Massachusetts, and especially Thaddeus Stevens of Pennsylvania, the most

powerful Member of the House. He had made allies of them. If Stevens wanted a constituent appointed consul to St. Helena, Stevens could have his way—provided there wasn't another deserving Republican already sitting on the lonely rock.

Lincoln looked far ahead. He was already restoring order in the conquered parts of the South. He would go ahead. He foresaw little opposition. He thought patience, kindliness, magnanimity armed with political sagacity would do wonders. Was he not a Kentuckian by birth? Hadn't he had southern friends? Didn't he know the South and couldn't he teach it to trust him?

He could not have heard the inaudible sigh, could not have seen the flutter of invisible wings, that went up and down those corridors of the White House and into that room where he was soon to lie in state—dead, the great brain unconscious forever, mercy and love for the time being silenced by an assassin's bullet.

The Nation would recover—of that he was certain. He thought of the discharged and disabled soldiers, of the enormous debts that had been piled up. Then he looked westward, toward the rich prairies and the fabulous resources of the mines. "I am going to attract them," he wrote, "to the hidden wealth of our mountain ranges, where there is room for them all. Tell the miners for me that I shall protect their interests to the utmost of my ability, because their prosperity is the prosperity of the Nation."

He prophesied well, for it was the West that did in fact absorb the discharged soldiers in great numbers, and out of the West came the wealth that would repair the shattered physical resources of the Nation. But neither from the West, nor from the North, nor from the East came the mercy that was in Lincoln and that glowed so tenderly during these last days.

The President must have been forming in his mind, even then, on his birthday, the majestic phrases of the second inaugural. He was taking pains with his message, just as he had done with the brief address at Gettysburg. He wanted to speak to the whole Nation—to cross the firing lines and bring reassurance to the suffering people of the South.

A victor he had to be. In that role fate had cast him. A conqueror he was not—no Napoleon, no emperor drunk on the heady wine of blood-won success. The plain man of the people, the teller of homely anecdotes, the lanky Kentuckian who liked to lounge with his feet higher than his head, this man still existed; but the other Lincoln, the great humanitarian, the statesman, the commander, the mystic, was more and more in evidence during these final days and weeks. It was this man who sat at his desk in the White House on February 12, 1865, or wandered through the halls—thinking, thinking, planning, planning, hoping, hoping.

The noble words were rising out of the depths of his being. He would confess the common guilt of North and South, he would renew his fervent avowal of faith in a living and just God, he would profess with the utter sincerity of a man who has suffered each wound, died each death during a long civil war, "malice toward none, charity for all."

Lincoln was striding toward martyrdom and immortality, but what he certainly saw on his last birthday was the dawn of peace on earth, good will among men. He could not know that the bullet of a southern fanatic was to shatter his beneficent hopes for the South, postpone for a generation the moral reunion of the two sections, and cause suffering only second to the agony of war itself.

THE STRANGE CASE OF MARY DOHERTY

By JUDGE L. D. MILLER
(Chattanooga, Tenn.)

On April 12, 1806, Mary Doherty, a girl between 12 and 13 years of age, was arrested and confined in the common jail at Jonesboro, the first established town in Tennessee, charged with the terrible offense of patricide—the murder of her own father.

The rare legal procedure applied by the court and the strange demeanor of this child while she languished in jail and during her trial, as recorded in Tennessee court annals of that early time, has made her case a classic in the legal[1] literature of the country and inspired the writing of at least one[2] novel.

Mary Doherty, in appearance, was just an ordinary backwoods child; but her remarkable shrewdness and astounding physical endurance in formulating and executing her defense—without help from any one—challenged the mental experts of her day and the record of her case has presented an unsolved problem to the psychologists ever since.

Michael Doherty, the father, was a widower with four children. Mary was the oldest. The family lived in a one-room log cabin in a small clearing remote from neighbors and the limited civilization which obtained in that recently settled wilderness west of the Allegheny Mountains.

CHILDREN ABUSED

Doherty, a rough, unlettered man of the soil, habitually drank and often abused his children; and it was thought that Mary had a special reason to fear him, but that was never fully established.

Doherty had been missing several days when a group of men who had been searching for him in the woods and surrounding country stopped in front of his house. The children, including Mary, crowded into the front door and looked out with stolid indifference.

And while they were stoutly denying any knowledge of their father's whereabouts, one of the men stooped low and while peering into the dark, narrow space noticed an unusual object under the cabin.

He gave the alarm and the men immediately pushed the children out of the way and went inside. In a few minutes they had raised a "puncheon" out of the floor and discovered Doherty's body. It was in an advanced state of decomposition, but they carried it outside and found that he had been killed by several crushing blows on the head.

A bloody ax was discovered on the premises, and dark stains which appeared recently washed, on the wall and on the floor between the bed and the hole through which the body was discovered convinced them that he had been killed on the bed.

OLDEST CHILD SUSPECTED

It was hard, no doubt, for these men to believe Mary had committed the awful crime of murdering her own father, but the incriminating circumstances that pointed so conclusively at her, she being much older than the other children, moved them to immediately accuse her and take her under arrest.

When some of the men laid restraining hands on her and began tying her with some tow strings which one of them produced, she suddenly froze in their grasps. In a moment she appeared to become a mere bulk

[1] 2 Overton, 79 Tenn. Reports.
[2] "Stone Doherty," by John P. Fort.

of senseless flesh, blind, deaf and dumb.

When they wanted her to move they simply pushed her body and her legs moved like an automaton. John Miller, a witness, described her as she appeared the next day at the coroner's inquest:

"There was a parcel of old women pushing her about and sometimes reviling her. I loosed her, took her to a branch and told her to wash herself, as she was extremely dirty. As she had been beaten and hauled about by several who were there, I pitied her and told her she must not run away and no person should injure her."

When the coroner's investigation was over, Mary was taken in charge by the sheriff and lodged in jail.

THREE JUDGES TRY CASE

In September, five months after the murder, the district court, which consisted of three judges, met at Jonesboro. After her long wait in jail the youthful prisoner was brought in and the indictment charging her with first-degree murder was read.

She was then asked by one of the judges to make her plea, but she never opened her eyes, uttered a sound or gave the court any more attention than she gave the two members of the bar the judges appointed to defend her—which was not the slightest.

The judges, taking notice of the strange prisoner, directed that a jury be empaneled and sworn in the following manner:

"You swear that you will well and truly inquire whether the person at the bar, Mary Doherty, stands mute through malice or by the visitation of God."

That is, the jury was to determine whether the prisoner was wilfully remaining silent or had she in fact lost her power of speech and discernment. Under the common law inherited from England it was necessary to have the jury pass on that question before she could be tried on the indictment.

The evidence showed that before she was charged with this crime she talked and understood like other children of like age and station.

FORCED TO EAT

But several witnesses, including her jailers, said that since her arrest she had not talked with or appeared to recognize anyone, that her eyes were always closed and that she had been kept alive by forced feeding.

The jailers also said that she constantly lay on a bed of straw always on her right side and with a blanket over her even in the hottest weather, and that to arouse her one had to always lift her up.

The jury quickly found that she was mute by the visitation of God; whereupon the court ordered that a plea of not guilty be entered for her.

Then came the trial on the indictment. The state produced its incriminating web of circumstantial evidence against her while she stood motionless in the presence of the court and jury. Her face was ghastly and was without the least expression or indication of understanding.

The court instructed the jury that as the defendant was under 14 and above 7 she was presumed unable to understand right from wrong, but that such presumption was removed if from the evidence it appeared that she had an understanding or consciousness of guilt.

The jury, after deliberating several hours, evidently believing that the prisoner was not accountable to the law on account of her mental and physical condition, returned a verdict of not guilty.

SURPRISING CLIMAX

The jailer who had her in charge, anxious to rid himself of such a bur-

den, quickly led her to the outside door of the courtroom and pushed her into the midst of the throng of curious spectators, who, failing to gain entrance into the room, had blocked the entrance all day. This ended her trial, but the surprising climax came later.

An original note prepared by the court after the trial and appended to the published record evidently for the purpose of preserving the facts of this unusual case contains the following revealing observations:

"She stood for some time motionless in the courtyard, where great numbers of persons examined her from curiosity.

"At length it was understood that some charitable women, who lived in the neighborhood, led her away from the crowd.

"The next day just before the sitting of the court, two of the judges were walking in a balcony opposite the courthouse when one of them observed that there was a girl sitting near an old woman at the steps of the courthouse, who in shape and size very much resembled the girl tried the day before.

"After a few minutes she threw up her head, and instantly appeared a countenance which was recognized to be the same. Her eyes were open, clear, animated and emitted striking sensations of complacency."

AMAZING DECEPTION

"In stature she was low, but of a robust, square form. Her cheekbones high and her face broad. Instead of her pale, death-like countenance exhibited in court, her complexion was vivid, and her countenance expressive. As the judges passed by her in going into court she threw up her head and smiled."

These circumstances are mentioned for the purpose of showing the inconceivable effort and exertion of which the human mind is capable, under certain circumstances. How she became impressed with the danger in which she was placed remains to be discovered, for so she must have been to have fitted her mind for the more than human task it had to perform.

After having been arraigned for murdering her father, it would not be strange if every nerve were tremulously alarmed.

But how any being endued with thinking powers could so abstract the mind and withdraw its accustomed emanations from the countenance, upon so awful an emergency, is beyond ordinary calculations.

She certainly practiced a deception, and that most completely. No person was seen but supposed that she had literally lost her understanding, if not her speech. Several hundreds, if not thousands, particularly examined her from time to time, and none discovered the deception. This part of her character to some may appear the more extraordinary when it is recollected that she was young, without education, decorum, a sense of religion or the benefit of social intercourse. But it seems that these circumstances alone enabled her to perform an effort of dissimulation too much for ordinary belief.

And so, Mary Doherty, unlettered mountain girl, by her brief public appearance, astounded learned judges and discerning men and left a record to befuddle the wise for ages yet to come; then she quietly stepped off the stage to await the tides of an unknown destiny.

A FIGHTING GARNISHMENT DEBTOR

Contributed by R. F. Rowley, Clovis, N. M.

Dear Sir:

On return from work this evening I find letter from Mr. ____ advising that you have again injected a number of your own personal interpretations and opinions relative to the present status of the garnishment action which you have undertaken with reference to my salary due from the New Mexico State Service.

As a result of the asinine representations made by you to him, he has advised—and very properly so—that he is advising the Commission to withhold the issuance of future pay checks to me, pending the adjudication of this question, in that they do not have any desire or interest to litigate the same, and desire an opinion from a court of competent jurisdiction wherein the legal questions have been properly raised, answered and ruled upon.

If you will get down to the practice of law and answer as best you can in your own feeble-minded, childlike manner the points I have presented, (copy served on you Oct. 13), to the court for dismissal of this ill-conceived, bastard, abortive attempt on your part to read into the New Mexico statutes, interpretations of your own, this matter can be speedily disposed of.

If you would take the trouble to read the law and its supporting citations, instead of calling up my bondsmen and attorneys of the city, in attempts to belittle me, you would not have made the ignoramus of yourself, which you did, by admitting that you "never even heard of a Forthcoming Bond in Garnishment."

If you had calmly awaited the termination of the legal time limits and then in a methodical manner taken advantage of the defaults, if any, and proceeded to enforce your judgment, instead of writing to Mr. ____ and sheriff ____ of ____ county, you would have saved yourself the ridicule of those persons in and connected with your profession, as well as saved me more uncalled-for humiliation and damages.

If you had taken the trouble at the outset of this ridiculous attempt on your part, to even learn the correct names and proper parties on whom to make service, it would have saved much uncalled-for annoyance, expense and misunderstanding to all concerned, including yourself. To me such blunderings have had a very definite and highly detrimental effect. The aspersions and insinuations so loosely cast about by you, as well as the unseemly legal steps undertaken, have resulted in serious and positive losses, which for your information I propose to have righted.

Until the receipt of Mr. ____'s let-

ter I had intended to let you take such reasonable time as you might desire to bring the motion to issue, not forcing you to go to Las Vegas at a time which might be inconvenient and probably expensive to you. However, unless you see fit to advise Mr. ____ that you are willing to rely upon the holding of the court when and as argued and thus allow the free flow of my salary checks until that time, I advise you now that I will take the proper steps at once to call the matter up for immediate hearing.

For your further information, I do not have an attorney, neither do I expect to retain one in disposing of so elementary a matter as this. Also that I wrote the "Forthcoming Bond" which seems to have so greatly agitated you, which incidentally is a copy of a similar bond which has many times stood the test of legality and court approval.

I may be reached at any time at either the local office of the New Mexico State ____ ____ or the ____ Hotel, Clovis, New Mexico.

Very truly yours,

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WHEN SPRING AND SUMMER MARRY

Diem vs. Diem, — Fla —, 193 So 65.

APPELLANT and appellee were married in October, 1929, and lived together as man and wife until November, 1934. A former suit for divorce by appellee having been dismissed without prejudice, this suit was instituted by him in December, 1936, and the final decree was entered in January, 1939. The defendant appealed and the plaintiff filed cross assignments of error. It is the usual case in which an old man possessed of a sizable wad of filthy lucre got messed up with a young woman and, as usual, the old man's wad caused trouble.

Appellant contends that since extreme cruelty is the sole ground relied on for divorce, the final decree should be reversed because the bill of complaint fails to allege that any of the acts relied on to constitute extreme cruelty were done with the deliberate intent to inflict pain and suffering, that none of them were cruel per se, and that none of them were continued and of such ruthless character as to prevent the injured spouse from performing his marital duty.

(1) It is quite true that in the criminal law, intent is an important element and must be shown, but the statute granting a divorce on the ground of extreme cruelty, Section 4983 (4), Compiled General Laws of 1927, does not require the bill to allege or the evidence to show that the acts of defendant were done with a deliberate intent to cause mental pain and suffering to the complainant. If it alleges a course of conduct that is shown to have met the terms of the Statute, that is sufficient.

The bill of complaint in this case alleges such a course of conduct on the part of the defendant. The evidence in support of the allegations of the bill is conflicting but it was all taken by the chancellor and he found it to be sufficient. He found appellee to be a mild mannered gentleman, a kind, faithful, and indulgent husband. He found appellant to be hypersensitive, self-centered, and petulant, and guilty of directing her emotional outbursts and sudden tantrums toward appellee frequently and without provocation. Indeed, the major portion of their married life appears to have been frequented by domestic squalls that sometimes reached cyclone proportions.

(2, 3) Extreme cruelty as ground for divorce is relative. What constitutes it may be determined by the de-

gree of one's culture, his emotions, nervous reaction or moral sense. It may also be tested by acts or social conduct to which the spouse affected is allergic. The rapid change in social conventions may generate conditions that bring on extreme cruelty. One spouse may indulge a habit to which the other is allergic that would be extremely painful, depending on the nature of the affected spouse. A wife that chews tobacco may strain the connubial relation and the husband that dips snuff may do likewise. Any habitual indulgence on the part of one spouse that causes mental torture, undermines the health, or tends to dethrone the reason of the other, is sufficient to constitute extreme cruelty as ground for divorce.

From all the record discloses, the parties to this cause were so far at variance in age, emotions, aspirations, and outlook that there was no common ground on which their differences could be fused. The hymeneal vow counted for nought. They reached the point that everything the one did irritated the other, both wound up in the hospital, they annoyed each other to distraction talking about their ailments, and when this appeal was taken, she had been treated by twelve different doctors.

But this often happens when an old man plunges into the matrimonial pool with a young woman. They are the product of different cultures, and experience teaches that their natures do not always fuse easily. He lives in the past; she lives in the future. She chews gum while he smokes his pipe. At the table, she calls for calories and vitamins; while he calls for hog and hominy. She likes ragtime but he prefers "In The Sweet Bye and Bye." She can dance all night, but nature drives him in with the swallows. Unless he be her father, there is in the very nature of the situation, little about an old man to excite the interest of a young woman, and unless he is in the market for a good nurse, there is no basis for an old man to become enamored of a young woman.

Furthermore, there is no biological ground on which such a union may be expected to wear. Man in his late fifties and up, does not derive his pleasures from the same sources that he did in his thirties. Time has exacted its toll and the net result of such exaction has thinned his hair, lengthened his waist line, shortened his wind, chilled the enthusiasms of his youth, and dulled or frozen other attributes. Science knows no process by which these may be restored but with it all, there is yet in his sky a cloud with a silver lining. His mental curve has not taken a downward plunge. Henceforth his pleasures must be of the mind and if he reacts philosophically to this state, he justifies his creation in the image of God.

WHEN BAR EXAMS WERE EASY

Contributed by Arthur H. Hasche, Watertown, S. D.

In territorial days when South Dakota was a part of Dakota Territory, two young men who had graduated from an Eastern Law School settled on homesteads in an Eastern South Dakota county.

Examinations for admission to practice before the Territorial Courts were conducted orally, the Presiding Judge usually designating a member of the bar to conduct the examination and then report back.

These two young men appeared before the Court at Sioux Falls on the opening day of a term of Court and shyly admitted to the Court that they would like to be admitted to practice.

The Judge designated a member of the bar to conduct the examination

and report his findings the next morning. That afternoon and during the early part of the evening the attorney designated to conduct the examination spent most of his time at a liquor bar. The two applicants became quite worried over their opportunity for an examination and finally persuaded the examiner to leave the bar and commence the examination.

The three took a walk on a prairie road in the late evening and the examination was conducted as follows:

"Both of you have graduated from a law school, haven't you?" The answer was "yes."

"You both know what a contract is, don't you?" The answer was "yes."

"You both know how to start an action in Court, don't you?" The answer was "yes."

"You know the difference between the plaintiff and the defendant, don't you?" The answer was "yes."

"Do you know the rules for filing on a homestead and proving up a claim?" The answer was "yes."

"Let's go back to town."

The next morning the examiner made a lengthy report to the Court explaining that the two young men were highly qualified to be admitted to practice and that he found them to be of exemplary character and entitled to admission to practice.

Upon motion the Court admitted both to practice. One of these men later became the Governor of the State and the other became a member of the State Supreme Court.

MY! MY! SUCH LANGUAGE!

(Letter to Attorney)

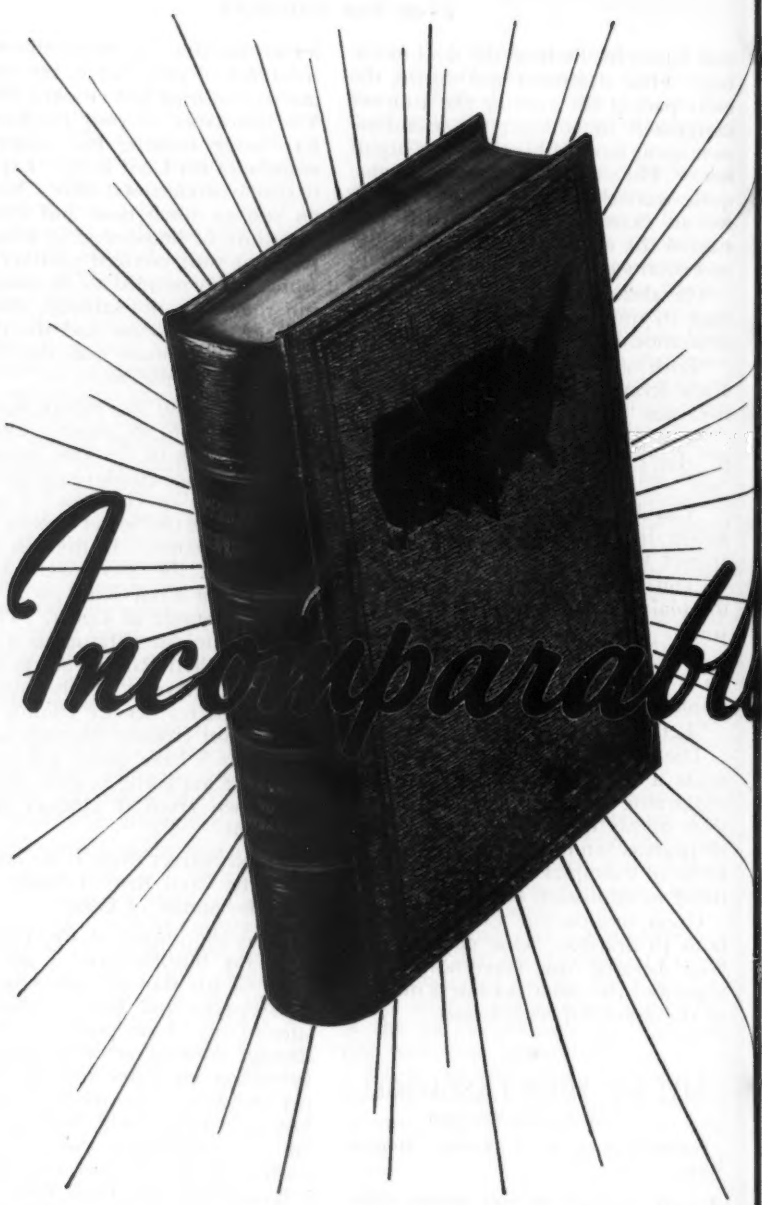
Contributed by C. A. Lokker, Holland, Mich.

I HAVE written to you about different things to the extend that you know that I'm not satisfied about different matters. I wrote to you the substance of your call to my home to me was nothing but crooked plottery. The substance of your crooked plottery being nothing but forgery and swindle of my Civil Rites. Let's have it clearly understood that I have given you as much time and every oppertunity of knowledge to know that it is not your crooked plottery about which I am minded to be concerned, but that I am not satisfied about the damage done to me and the damage done to my home and the damage done to my children.

As I wrote to you before the Secret Service came to me about a court case the substance of the case being that a secret service employee is the father of my child or children. I am not satisfied that the Secret Service should try me for court. In the first place I was taught the Secret Service issues the Law of Civil Rites to a Citizen as is the Statue of Court. That the Court issues the Statue to a citizen as is the Civil Rite of Secret Service. Thus let's have it clearly understood I don't Secret Service coming to me about your crooked plottery anymore and thus I have given you as much time as I am going to give you to get your own crooked plottery straightened out.

If I'm correct there is no law other then the Civil Rite of Secret Service and the Statue of Court.

As is the Statue of the Court Mr. S. is my husband and I am plenty tired of his slander and assault and non-support and battery. that he issues to me. I am plenty tired of the damage done to me of his forgery and swindling my Rites and the Rites of my children. I wrote to you about Luvern's being held back in school etc. you did nothing about it. I write I am tired that the Secret Service gives a family relation's Civil Rites to people other then people of my family that my family is given civil Rites in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home other their own as is a family relation.

You came to me about the contract we had with Mrs. V. concerning this contract. I suffer more then a $2000 damage due to the Breach of Promise (void bond) of Mrs. V. If you came to me to make my bond void I sorry I refuse to have you come. You may be a lawyer but when you come to me to my house to do law work then you'd better come other then for forgery and swindle of in crooked plottery as you have done. Thus if you fail to straighten thing out immediately and permanently I will know that you either consider the truth to be a slander and an insult, or else refuse to do as is law.

QUALITY GOODS

Contributed by Theron P. Pray, Ashland, Wisc.

On a voucher accompanying payment of a claim against the Government for client's damages, including the death of his horse, wrecking of his wagon, and personal injuries to client resulting from a collision with a CCC truck, the following wording appeared:

> "I certify that the above articles were received in good condition and are of quality equal to the requirements of the specifications or contract."

Also on the voucher is this statement signed by the Senior Clerk who must be up the line aways from the local clerk:

> "Pursuant to authority vested in me, I certify that the above articles were received in good condition, after due inspection, acceptance, and delivery prior to payment as required by law, or the services were performed as stated; that they were procured under the contract numbered above or the unnumbered contract attached hereto, or that they were procured without written contract, in open market, and with or without advertising, under the circumstances stated in No. 4 of 'Method of or Absence of Advertising' shown on reverse hereof, and were necessary for the public service; and that the prices charged are just and reasonable and in accordance with the agreement."

The "No. 4" referred to on the back of the voucher reads:

> "Without advertising in accordance with Act approved 6–28–37 (Pub. 163—75th Congress, Chap. 383, 1st Session)."

Can it be that there is something which is not covered by a Government form or has some one run amuck and grabbed the first form he could reach? At any rate, the check came with the voucher and that appeared to be in proper order.

THE PEACEMAKER

By Jerry J. Sullivan, Pensacola, Fla.

When I was a small boy I stopped one evening in a Blacksmith Shop to watch the Smithy work the hot iron on his anvil. Whenever he struck the iron on the anvil with his hammer, brilliant sparks from under his hammer would fly in all directions. His work amused me very much, and there I lingered awhile, watching the Smithy beat the iron into shape.

Suddenly the work stopped and the anvil ceased to ring; a group of men, some five or six, mounted on horses, appeared in front of the Shop. Our attention was then directed to the party. All dismounted, tied their horses to hitching posts, and came forward towards the Smithy. Said the first, or leader, to the Smithy, "Justice, we are here." Then I realized the troopers were seeking the law and the Blacksmith was the Justice, or as I afterwards learned, a Justice of the Peace.

The Blacksmith-Justice stood by

his anvil, hammer in hand, and his helper leaned over on the lever of the old fashioned bellows, while the party formed around the anvil and Smithy. Then the troopers began to talk of cows, corn and cotton. Every one had his say or told his story, while the Justice listened with deep interest and attention. No lawyers, nor books or papers, only the anvil and irons, coal and smoke. I did not learn or understand what the differences between the parties were, only that it was something concerning cows, corn and cotton.

After all had been heard and a few questions asked by the Justice, he proceeded in a few simple words to give the party his judgment. This apparently satisfied all concerned, as nothing was said by any of them. The law had spoken, and to follow the spoken words was evidently their intention.

Back to the horses the troopers went, untied and remounted. Away they rode, westward over the hill, and were soon lost to my vision. Who they were, where they were from and what their troubles were, I never learned.

The Blacksmith signaled his helper to work the bellows while he placed the iron deep into the coals of the Forge for another heat, and the work went on. Soon the anvil was ringing and the sparks flying again.

Such simplicity in old-fashioned justice among rural and honest to goodness people left a deep impression upon my memory.

In after years when I read in the Divine Book "Blessed are the peacemakers for they shall see God," my mind reverted back to the Blacksmith-Justice with his anvil, hammer and irons, and to the peaceful service he rendered to his people, on this long to be remembered occasion of my childhood.

A TRAIN AND BULL STORY

SUIT was brought against a railroad company for killing a bull. It appeared that the bull was being led by a man near the track when it suddenly ran in front of the train and was killed. There was a recovery of a judgment in the trial court from which there was an appeal by the railroad company. The attorney for the Company in his brief says:

"If the attorney for the appellee in this case had been a passenger on the train in question we believe that he, as well as the other passengers, would have agreed with Mr. Delhomme when he stated: 'He didn't have no business looking off the right of way,' and during the period of time that his life and the lives of the rest of the passengers were intrusted to Mr. Delhomme that he would have insisted most strenuously that Mr. Delhomme continue to watch the track ahead of him and not look for $1,000 bulls which might be parading up and down dirt roads alongside the track. When the writer of this brief was considerably younger than he is now, his ambition was to be not only a pirate and a second Julius Caesar but between times a railroad engineer. When not a pirate, or leading his conquering legion into battle, he pictured himself leaning out of the cab window with his eyes fastened on the rails ahead of him, and this boyish picture has made such an impression that it has developed into the idea that the engineer, when driving his steel horse over the rails at 40 miles an hour, with the lives of the passengers dependent on his properly discharging his duties, should look ahead and keep looking ahead, watching the rails and signals and disregarding the passing scenery to the right and left or the antics of a refractory, registered Holstein bull that might suddenly conceive the idea of butting a railroad train off the track.

"If Mr. Delhomme had been watching the bull as it ambled down the road which paralleled the railroad track until it reached the crossing, and then instead of going ahead, it turned and suddenly darted at right angles across the track, he might have failed to see a broken rail, a thrown switch, or a signal of danger, but he would have seen the bull. However, there is no testimony that he could have stopped his train in time to have avoided taking the conceit out of the bull.

"We have several times avoided a per-

sonal collision with a bull by hastily ducking under a wire fence or climbing a tree, but unfortunately railroad trains cannot adopt either procedure, and where a bull conceives an ambitious desire to test out his strength with a railroad engine, or prompted by youthful vanity and a desire to impress some young heifer, undertakes to dispute the right of way with a train moving at 40 miles an hour, we are not advised of anything that the railroad engine can do to avoid the impending tragedy, where the bull gives no warning of his intention until he presents himself immediately in front of the oncoming train.

"It is true if the bull had adopted the dueling code and sent his challenge in advance that the train could have remained at Orange until the bull's ardor had time to cool, but apparently the bull was advised of our present penal code, which hangs you for killing your brother in fair fight but permits you to go scot free if you suddenly and without warning assault the object of enmity. This knowledge and these motives may have passed through the mind of the bull, so that instead of sending a challenge to passenger train No. ---- to meet him in fair fight at the third crossing, head to head with tails east and west, he decided on the more modern method of a sudden and unexpected assault delivered from ambush.

"All of the foregoing 'bull' is simply for the purpose of suggesting to the court that, while the jury may have found that those operating the train did not use due diligence to avoid striking the bull, we submit that in view of all the surrounding circumstances and conditions they would have been hard put to it to have advised what could have been done to have avoided the collision. They blew the whistle and rang the bell; there was not sufficient time to use moral suasion or build a track around the bull. The present equipment of railroad trains does not permit of their going around, over, or under, and where a bull makes a sudden, violent, and unprovoked assault on a steam engine, what can the engine do but invoke the God of Battle and snorting the defiance of Macbeth meet the assaulter head on."

HIS NAME IS LINCOLN

By Shirley P. Claud, Norfolk, Va.

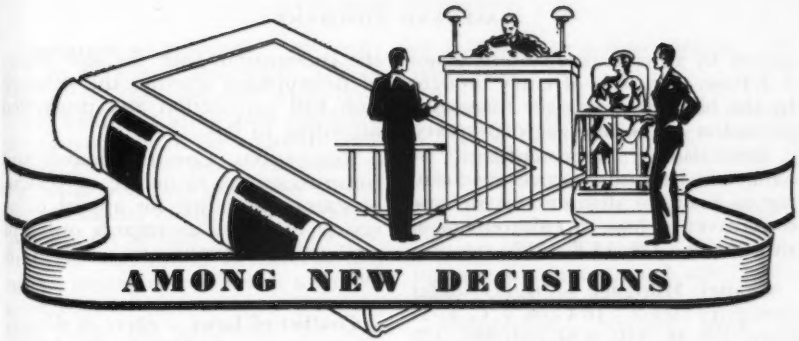
Who is this man who sits enshrined,
In granite and stone and sacred glory?
Who is he, of all mankind,
From ages past and history's story,
Whose body, though long has turned
to clay,
Whose spirit rises ever to stay,
And move among men more today,
Than in the past?

Who is this man, when upheaval's
tide,
Spreading like a turbulent wrath it
came,
Met the onrushing vehement pride,
And stilled it in love's own name?
Who is he of humanity's soul,
From hate's own pit, his hands would
mold,
A nation, united, and in its heart enfold,
Freedom and justice.

Who is he, in whose memorial hall
I stand with bared head and reverent
awe,
And read: "With malice to none but
charity for all."
This, to him, a primary law,
And now enscribed in this his shrine,
Words enriching the ties that bind,
Peoples of all races of mankind,
Into Democracy.

Treading softly now I stand,
At the feet of this great man.
Words of wisdom and of strength,
Echoing from the breadth and length,
Of this our land.
Sounding like a clarion band.
Songs and voices back through time,
Blending symphony of mankind,
Loudly now the hosts proclaim.
In crescendo sounds the name,
Of Lincoln.

Treading softly now I stand,
At the feet of this great man.
His beautiful raiment my soul would
don,
And with his truth go marching on.



AMONG NEW DECISIONS

Attorneys — *client privilege.* In United States v. Bob, 106 F (2d) 37, 125 ALR 502, it was held that the privilege between attorney and client is not violated by the admission, on the trial of a criminal charge, of the testimony of one who had been employed as attorney for the defendant, as to conversations and communications with such defendant during the commission and in furtherance of the crime charged in the indictment, where prior to the admission of such testimony a prima facie case had been established.

Annotation: Attorney-client privilege as affected by wrongful or criminal character of contemplated acts or course of conduct. 125 ALR 508.

Attorneys — *practice of law.* In Liberty Mutual Ins. Co. v. Jones, — Mo —, 130 SW (2d) 945, 125 ALR 1149, it was held that there are fundamental differences between the "practice of law," in the sense of court work, and "law business."

Annotation: What amounts to practice of law. 125 ALR 1173.

Automobiles — *sheriff's warning to pedestrian.* In Nelson v. Bjelland, — Wash —, 95 P (2d) 784, 125 ALR 641, it was held that a warning statement by sheriff, made at the scene of an automobile accident, against persons going into the highway to signal oncoming cars, is relevant and material on the question whether plaintiff, who was involved in that accident, and was subsequently struck by defendant's truck while he was standing in the highway near the scene of the previous accident, knew of the situation, and whether it was necessary for him to signal traffic, and in connection with defendant's contention, supported by other evidence, that plaintiff was not signaling as claimed, but was looking for evidence to establish blame for the previous accident.

Annotation: Admissibility on issue of negligence or contributory negligence of statements warning one of danger. 125 ALR 645.

Bankruptcy — *insane person.* In Re Evanishyn, 107 F (2d) 742, 125 ALR 1290, it was held that involuntary proceedings in bankruptcy may be brought against a person previously adjudged insane, where based on an act of bankruptcy prior to such adjudication.

Annotation: Voluntary or involuntary bankruptcy proceedings in case of incompetent or infant. 125 ALR 1292.

Banks — *noncompliance with statute as to loans.* In re York County Savings Bank v. Wentworth, — Me —, 9 A (2d) 265, 125 ALR 1509, it was held that the fact that loans made by a savings bank were not authorized by its trustees and that they did not formally authorize the foreclosure of mortgages securing such loans, as re-

quired by a mandatory statute, is not a defense to a writ of entry brought by the bank as mortgagee to recover possession of the mortgaged property.

Annotation: Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security. 125 ALR 1512.

Chattel Mortgage — *rights under insecurity clause.* In Cook v. C. I. T. Corp. 191 SC 440, 4 SE (2d) 801, 125 ALR 306, it was held that an "insecurity clause" in a chattel mortgage which provides that if the holder deems itself insecure, the full amount of the debt, including any note given, shall, without notice, become due and payable, in which case the purchaser agrees that the holder may, without any previous notice or demand, and without legal process, enter any premises where the property may be found and take possession thereof, does not confer upon the holder of the mortgage an arbitrary right, but the exercise of the right must be in good faith and upon such reasonable apprehension of danger of losing the property as would cause a reasonable man to act.

Annotation: Validity, construction, and application of insecurity clause in chattel mortgage. 125 ALR 313.

Civil Service Commission — *review of action of.* In Re Fredericks, 285 Mich 262, 280 NW 464, 125 ALR 259, it was held that a statute providing for the judicial review of the removal for cause of a public employee by a civil service commission is not unconstitutional as imposing administrative and nonjudicial functions on the courts where, although the statute purports to authorize an "appeal" from the order of the commission, the review actually provided for is essentially in the nature of certiorari, being not a review de novo, but merely a review of the record as made before the commission, with the sole object of determining whether the commission had jurisdiction and proceeded according to law.

Annotation: Constitutionality and construction, as to nature of review, of statute providing for appeal to or review by court, as regards order of civil service commission. 125 ALR 263.

Conflict of Laws — *effect of divorce on insurance.* In New England Mut. Life Ins. Co. v. Spence, 104 F (2d) 665, 125 ALR 1281, it was held that the effect of a divorce to terminate the wife's interest as beneficiary of a policy of insurance on the husband's life is to be determined by the law of the state in which the parties resided at the time of the divorce, rather than by the law of the state in which the contract of insurance was made.

Annotation: Conflict of laws as regards effect of divorce, or other change in the relation of insured and beneficiary, upon rights of beneficiary under insurance policy. 125 ALR 1287.

Constitutional Law — *suspension of driver's license.* In Re Commonwealth v. Cronin, — Pa —, 9 A (2d) 408, 125 ALR 1455, it was held that one whose automobile operator's license is suspended for speeding is not denied due process of law by the action of a representative of the secretary of revenue in taking, without notice to him, and in his absence, the testimony of a police officer that he was operating his car at an illegal speed, where the statute permits an appeal to the courts and provides for a trial de novo therein.

Annotation: Validity, construction, and application of statute or ordinance relating to granting or revocation of license or permit to operate automobile. 125 ALR 1459.

Contempt — *misconduct of jurors as.* In People v. Rosenthal, 370 Ill 244, 18 NE (2d) 450, 125 ALR 1271, it was held that jurors who disobeyed the instructions of the court by separating from other jurors and conversing with outsiders and who abused the permission of the court to take a bus ride on Sunday by using the bus to make the round of taverns and agreed among themselves to withhold knowledge of their conduct from the trial judge are punishable for contempt irrespective of whether their conduct affected the discharge of their duty as jurors.

Annotation: Misconduct by jurors as contempt. 125 ALR 1274.

Contracts — *part performance.* In Patterson v. Beard, — Iowa —, 288 NW 414, 125 ALR 393, it was held that resignation from a position as school superintendent, for the alleged purpose of complying with an oral contract for the purchase of an interest in a business college, is not the giving of "something in earnest to bind the contract, or in part payment," sufficient to take the contract out of the statute of frauds.

Annotation: May part performance or part payment which will take oral contract out of statute of frauds be predicated upon giving up present position, employment, business or profession, or opportunities in that field. 125 ALR 399.

Contracts — *request for support of relative.* In Rotea v. Izuel, — Cal(2d) —, 95 P (2d) 927, 125 ALR 1424, it was held that no implied obligation on the part of a brother to pay for the board, lodging, and care of an invalid sister whom he was not under a legal duty to support arises from the fact that such services were rendered at his request.

Annotation: Implied obligation of one to pay for services or goods which another at his request has rendered or furnished to a third person. 125 ALR 1428.

Crops — *right to remove nursery stock.* In Story v. Christin, — Cal(2d) —, 95 P(2d) 925, 125 ALR 1402, it was held that a vendee of realty dispossessed on cancelation of an executory contract of sale, who planted nursery stock thereon solely for the purpose of removal and sale, has a right to remove it.

Annotation: Nursery stock attached to the soil as real or personal property, and resulting rights. 125 ALR 1406.

Deeds — *creation of estate in reversion.* In Norman v. Horton, — Mo —, 126 SW (2d) 187, 125 ALR 531, it was held that an estate in reversion does not result from a deed which conveys a life estate to a person named with remainder over to the heirs of her body and provides that in the event of her death without bodily heirs surviving the title shall revert and vest absolutely in the "heirs at law" of the grantor; despite the contention that under the doctrine of worthier title the grant to the "heirs at law" of the grantor is nugatory and that they take by descent and not by purchase.

Annotation: Grant to one for life, and afterwards, either absolutely or contingently, to grantor's heirs or next of kin, as leaving reversion or creating remainder. 125 ALR 548.

Discovery — *ascertaining who to sue.* In Bluefield Supply Co. v. Broome, — W Va —, 5 SE (2d) 530, 125 ALR 858, it was held that a bill of discovery will lie for the purpose of ascertaining who are the proper parties against whom a suit or action may be prosecuted.

Annotation: Bill of discovery or statutory remedy for discovery as available for purpose of determining who should be sued. 125 ALR 861.

Elections — *corporate gifts under Corrupt Practices Acts.* In La Belle v. Hennepin County Bar Asso. — Minn. —, 288 NW 788, 125 ALR 1023, it was held that a bar association organized as a social and charitable corporation under 2 Mason's Minn. Stat. 1927, §§ 7892–7900, is doing business in the state within the meaning of the Corrupt Practices Act, 1 Mason's Minn. Stat. 1927, § 563, which provides that no corporation doing business in the state shall pay or contribute any money, property, or services, directly or indirectly, to any political party, organization, committee, or individual for political purposes.

Annotation: Construction and application of provisions of corrupt practices act regarding contributions by corporations. 125 ALR 1029.

Embezzlement — *custody but not possession.* In Fitch v. State, 135 Fla 361, 185 So 435, 125 ALR 360, it was held that a janitor and night watchman who has a key to a place of business but merely has custody of the property therein and has no right to take money from a cash drawer therein is guilty of larceny, rather than embezzlement, in feloniously taking money from such drawer, since he does not have the possession of such property.

Annotation: Larceny as affected by distinction between custody and possession. 125 ALR 367.

Former Jeopardy — *discharge of jury.* In Baker v. Commonwealth, — Ky —, 132 SW (2d) 766, 125 ALR 691, it was held that a plea of former jeopardy in a murder trial is sustained where the court, without the consent of defendant or his counsel and in their absence, after the commencement of the former trial, and during an adjournment from Saturday to Monday, excused one of the female jurors on account of illness, and on Monday, without any showing at either time as to the extent and probable duration of the juror's illness, discharged the jury which had been reduced from the thirteen originally drawn to eleven, in consequence of the release of that juror and the failure of another juror to appear because of the death of his wife, the record failing to disclose any real or urgent necessity for the discharge of the jury, on the contrary revealing that there was no such necessity.

Annotation: Plea of former jeopardy where jury is discharged because of illness or insanity of juror. 125 ALR 694.

Fraud — *statements as to future events.* In Page v. Pilot Life Ins. Co. 192 SC 59, 5 SE (2d) 454, 125 ALR 872, it was held that deceit or fraudulent representation, in order to be actionable, must, as a general rule, relate to existing or past facts, and the fact that a promise made in the course of negotiations is never performed does not in and of itself constitute nor evidence fraud.

Annotation: Promises and statements as to future events as fraud. 125 ALR 879.

Game Laws — *possession of carcass.* In re Commonwealth v. Worth, — Mass —, 23 NE (2d) 891, 125 ALR 1196, it was held that the possession of the carcass of a deer accidentally struck and killed by an automobile is unlawful under a statute penalizing the possession of such a carcass "except as provided in" a statute permitting, under certain restrictions, the hunting of deer with shotgun or bow and arrow, and the killing of deer to prevent damage to crops, fruits, or ornamental trees, or except when lawfully taken or killed outside the state.

Annotation: Construction and application of statute or ordinance making possession of carcass of game, fish,

or bird, or parts thereof, a criminal offense. 125 ALR 1200.

Garnishment — *answer of garnishee.* In Musolino Loconte Co. v. Costa, — Mass —, 23 NE (2d) 155, 125 ALR 250, it was held that an answer by one summoned as trustee of the goods and effects of the principal defendant may be made upon information and belief, and in the absence of qualification upon examination by interrogatories, or of contradiction by allegation and proof of the true facts, such answer will be conclusive.

Annotation: Answer on information and belief by trustee or garnishee in garnishment or trustee process. 125 ALR 253.

Home Owners' Loan Act — *construction.* In McAllister v. Drapeau, – Cal. (2d) —, 92 P (2d) 911, 125 ALR 800, it was held that the Federal Home Owners' Loan Act places no compulsion, direct or indirect, on the holder of a mortgage to accept an offer of the Home Owners' Loan Corporation in settlement of the mortgage debt.

Annotation: Home Owners' Loan Act. 125 ALR 809.

Income Tax — *what constitutes "sale or exchange."* In Commissioner of Internal Revenue v. Freihofer, 102 F (2d) 787, 125 ALR 761, it was held that sales of capital assets referred to in § 117 of the Revenue Act of 1934, 26 USC § 101, providing that in case of a taxpayer other than a corporation only certain percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing the net income, are those sales only which are voluntarily made by the taxpayer, and do not include judicial sales made by the sheriff in execution of a judgment in a proceeding for the foreclosure of a mortgage given by a prior owner.

Annotation: What constitutes a "sale or exchange" within the meaning of income tax statutes providing for special treatment of gain or loss from the sale or exchange of capital assets. 125 ALR 767.

Indictment and Information — *charge of aggravation.* In Rell v. State, — Me —, 9 A (2d) 129, 125 ALR 602, it was held that the penalty prescribed for an assault and battery of a high and aggravated nature, by a statute which commits to the court discretion, subject to maximum limits, as to the penalty, may be imposed although the indictment does not allege that the assault and battery was of an aggravated nature.

Annotation: Necessity of charging matter of aggravation in indictment or information, to justify imposition of higher punishment under a statute which varies punishment according to enormity of offense. 125 ALR 605.

Injunction — *protection of exclusive agency contract.* In Bethlehem Engineering Export Co. v. Christie, 105 F (2d) 933, 125 ALR 1441, it was held that one constituted by contract the exclusive agent of another for the sale of rights to foreign governments to manufacture a patented military tank, alleged to be unique and irreplaceable, is not entitled to an injunction forbidding the other party to engage any other agent to sell such rights, where the agent's right to continued performance of the contract depends upon his performance of his duties under the contract, which involve not only the faithful prosecution of the business in general, but also, under the terms of the contract, co-operation with the principal in deciding to what countries it will be "practical" to sell rights and what will be a reasonable price to ask.

Annotation: Injunction to prevent employment of, or contract with, another, as available remedy for defend-

ant's breach of contract to employ plaintiff or give him an exclusive right to promote or sell defendant's product or invention. 125 ALR 1446.

Insurance — *death from violation of traffic law.* In Van Riper v. Constitutional Government League, — Wash —, 96 P(2d) 588, 125 ALR 1100, it was held that violation of traffic laws in failing to stop before entering a street intersection and in driving at an excessive rate of speed is not a "criminal violation of law" within a provision of a mutual benefit certificate excepting from its coverage "death due to acts committed in criminal violation of law."

Annotation: Traffic violation as violation of law within provision of life or accident insurance policy or certificate excepting death or injury due to violation of law. 125 ALR 1104.

Insurance — *employer's insurable interest.* In Turner v. Davidson, 188 Ga 736, 4 SE (2d) 814, 125 ALR 401, it was held that an employer does not have an insurable interest in the life of his employees solely because of the relationship of employer and employee, but in order for such to appear it must be shown that the employer had a substantial economic interest in the life of the employee; that is, that by virtue of the relationship he might be reasonably expected to reap a substantial pecuniary benefit through the continued life of such employee, and to sustain consequent loss upon his death. The mere fact that at the time the policy was issued the employee was under contract to the employer for a period of approximately a year does not, standing alone, disclose an insurable interest of the employer in the life of the employee. Accordingly, the evidence did not support the verdict in favor of the defendant employer for the proceeds of the policy of insurance in question.

Annotation: Insurable interest of employer in life of employee. 125 ALR 408.

Insurance — *loss of hand.* In Muse v. Metropolitan Life Ins. Co. — La —, 192 So 72, 125 ALR 1075, it was held that an injury to a hand which so fractured and dislocated the bones as to render the hand useless is not within the coverage of the policy of insurance against "accidental death and dismemberment" which provided a stipulated indemnity for loss of a hand "by severance at or above wrist joint."

Annotation: Loss or mutilation of member, or loss of sight, contemplated by indemnity provisions of accident insurance policy. 125 ALR 1083.

Insurance — *reformation for insurer's mistake.* In Hayes v. Travelers Ins. Co. 93 F (2d) 568, 125 ALR 1053, it was held that an insurer which, through a clerical error in its home office, has issued a disability benefit policy for an amount disproportionate to the premium charged therefor, but conforming to the statements made by its agent to the insurer, who acted in good faith in the matter, is not entitled to reformation of the policy after the insured has become totally disabled.

Annotation: Right of insurer to reformation of policy or other relief because of its own error, not due to misrepresentation by insured, in computing premiums, indemnity, or other benefits or options under policy. 125 ALR 1058.

Insurance — *sufficiency of bookkeeping.* In Security National Fire Ins. Co. v. Schott Drug Co. — Tex —, 129 SW (2d) 632, 125 ALR 342, it was held that a set of books which, when delivered to an insurer after a loss by fire of a stock of goods, pre-

sents a record merely of "total values," for given periods, of property added to or taken from the stock,—the original invoices and charge tickets, except for the current month in which the fire occurred, having been destroyed in the fire,—does not constitute a substantial compliance with the provisions of a record warranty clause of a fire policy requiring the insured to keep a set of books presenting "a complete record of business transacted," defined as including a complete record "of all the property which shall go into the premises and be added to the stock, and of all property taken from the stock," and requiring him "to keep and preserve . . . all books."

Annotation: Sufficiency of bookkeeping to satisfy condition of insurance policy. 125 ALR 350.

Insurance — *what constitutes "building."* In Ætna Life Ins. Co. v. Aird, 108 F (2d) 136, 125 ALR 1436, it was held that an automobile trailer equipped as a dwelling, in which insured was living at the time of its destruction by fire, is, when not being drawn along the highway, a "building" within the provision of an accident insurance policy for double indemnity for injuries caused "by collapse of the outer walls, or burning of a building, if the insured is therein at the time of the collapse or commencement of the fire."

Annotation: Accident insurance: construction and effect of provision for indemnity or double indemnity in case of injury in consequence of burning of building. 125 ALR 1440.

Lease — *part performance of oral agreement to renew.* In Dabanian v. Rothman, 291 Mich 31, 288 NW 324, 125 ALR 1465, it was held that expenditures by a tenant for the maintenance of leased premises which it is his duty under the lease to maintain cannot be regarded as a part perform-

ance of an oral agreement to renew the lease so as to take it out of the operation of the statute of frauds.

Annotation: Part performance to take oral contract of lease out of statute of frauds predicated upon acts or conduct of one in possession of the property under another contract or right. 125 ALR 1468.

Life Estates — *right to crops.* In Re Mischke, — Neb —, 287 NW 760, 125 ALR 277, it was held that where a tenant for life of farm land leases the land, with the rent payable in a share of the crop, and dies while the crop is growing, title to the share of the crop reserved as rent passes to the executor of the tenant for life as assets of that estate.

Annotation: Rights in respect of crops as between estate of life tenant and remaindermen. 125 ALR 280.

Limitation of Actions — *check as tolling.* In First National Bank v. Gamble, — Tex —, 132 SW (2d) 100, 125 ALR 265, it was held that a check bearing the notation "int. on note," considered in connection with evidence identifying the note referred to, is an acknowledgment in writing sufficient to toll the statute of limitations as regards an action on the note.

Annotation: Check in payment of interest or instalment of principal as an acknowledgment sufficient to take case out of statute of limitation. 125 ALR 271.

Pawnbrokers — *regulation of.* In Medias v. Indianapolis, — Ind —, 23 NE (2d) 590, 125 ALR 590, it was held that the regulation of pawnbrokers by requiring them to establish their good character before obtaining a license, requiring them to keep certain records and supply information to the police, and providing that they shall hold all purchased and pledged articles for ninety-six hours, is not arbitrary or unreasonable, since it has a direct relation to the detection of crime and the apprehension of criminals.

Annotation: Validity of statutes or ordinances which impose duties upon pawnbrokers as regards identity of persons with whom they deal or other means of enforcing criminal law against theft. 125 ALR 598.

Picketing — *prohibiting.* In Reno v. District Court, — Nev —, 95 P (2d) 994, 125 ALR 946, it was held that a municipal ordinance which sweepingly prohibits peaceful picketing has no reasonable and substantial relation to the promotion of the public safety, health, morals, or general welfare, for which the exercise of the police power may be invoked.

Annotation: Validity of statute or ordinance against picketing. 125 ALR 963.

Plumbing — *what constitutes.* In State v. Gottstein, — Minn —, 288 NW 221, 125 ALR 715, it was held that cutting off and cleaning out roots clogging tile connecting the house sewage system with city sewer by use of an electrically powered cutting device, involving no change or disturbance of tile or change or addition to structure thereof, are not repairs within the meaning of the plumbing ordinance under which the conviction was had.

Annotation: What constitutes plumbing or plumbing work within statute or ordinance requiring license or otherwise regulating plumbers or plumbing work. 125 ALR 718.

Poor Laws — *reimbursement of public.* In Worcester v. Quinn, — Mass —, 23 NE (2d) 463, 125 ALR 707, it was held that a recipient of old age assistance benefits from a municipality is not bound to reimburse the municipality because subsequent-

ly to the receipt of such benefits she inherited property in excess of the benefits received.

Annotation: Right of public to reimbursement from recipient, his estate or relatives, of old age assistance payments. 125 ALR 712.

Sale — *strike clause in contract of.* In Dant & Russell, Inc. v. Grays Harbor Exportation Co. 106 F (2d) 911, 125 ALR 1302, it was held that the obligation to make the deliveries required by a sales contract to be made at stated times within a period during which deliveries were prevented by a strike is extinguished, and not merely postponed, where the contract provides that the seller shall not be liable for delivery or nonshipment, or for delay or nondelivery, if occasioned by strikes, lockouts, or labor disturbances, and that the buyers will accept delayed shipment or delivery when occasioned by such causes, "if so required by the seller."

Annotation: Construction and effect of "strike clause" of contract. 125 ALR 1304.

Small Loan Business — *regulation of.* In Financial Aid Corp. v. Wallace, — Ind —, 23 NE (2d) 472, 125 ALR 736, it was held that the statute regulating small loan business which empowers the department of financial institutions to issue, refuse, or revoke licenses after a reasonable opportunity for hearing; make such general and specific rules and regulations not inconsistent with the act as may be necessary for the proper conduct of the business; classify loans and fix such maximum rates of interest for each class as will make available adequate credit facilities to individuals without the security generally required by commercial banks—does not violate the constitutional provision which divides the powers of government into three separate departments: the legislative, the executive including the administrative, and the judicial.

Annotation: Constitutionality of statutes regulating business of making small loans. 125 ALR 743.

Telegram — *revocation of offer by.* In Wertheimer, Inc. v. Wehle-Hartford Co. 126 Conn 30, 9 A (2d) 279, 125 ALR 985, it was held that seller's telegram revoking its previous telegraphed offer was too late where it was filed with the telegraph company before, but was not received by the buyer until after, the latter had filed his telegram of acceptance with the telegraph company.

Annotation: Attempted revocation of offer by letter mailed or telegram filed before, but not received until after, letter or telegram of acceptance was mailed or filed. 125 ALR 989.

Trusts — *investing in security pool.* In First National Bank v. Basham, — Ala —, 191 So 873, 125 ALR 656, it was held that a bank may in good faith and with reasonable business prudence, even in the absence of a statute in that regard, properly invest funds of a particular trust in "participations" in mortgage loans made by or acquired by it with proper care and held in a common fund, entirely within its control, representing investments of several trusts of which it is trustee.

Annotation: Investment of trust funds in share or part of single security or group or pool of securities. 125 ALR 669.

Public Officers — *estoppel to contest election.* In Motes v. Davis, 188 Ga 682, 4 SE (2d) 597, 125 ALR 289, it was held that although a constable, while occupying his office and performing the duties thereof, enters as a candidate for the office in a void election and is defeated, this conduct does

not estop him from attacking the validity of the election and claiming title to the office for the unexpired portion of the term for which he was elected and qualified at the regular election held two years previously.

Annotation: Doctrine of estoppel as applicable against one's right to hold a public office or his status as a public officer. 125 ALR 294.

Usury — *conflict of laws.* In State v. Rivers, — Minn —, 287 NW 790, 125 ALR 475, it was held that the law to be applied in determining the validity of a chattel mortgage questioned on the ground that the note secured thereby is usurious is that intended by the parties. Absent evidence of express intent, it is presumed that the parties intended to be applied either the law of the place of performance of the note or the law of that one of the states having contacts vital to the transaction which would make the contract enforceable. Here it appears that the parties intended the issue of usury to be governed by the law of Wisconsin, the place where the note was payable and where the chattel mortgage is valid. Since the note secured is not usurious under the law of Wisconsin, the mortgage here involved is not void.

Annotation: Conflict of laws as to usury. 125 ALR 482.

Wills — *construction of word "now."* In Re Estate of Lusk, — Pa. —, 9 A (2d) 363, 125 ALR 787, it was held that the word "now" in a will devising the house and lot "in which I now reside," situated in a named city and ward, in view of the statute requiring a will to be read as if it had been executed immediately before the death of the testator, refers to the time of the death of the testator rather than the time of the execution of the will, and property acquired after the execution of the will and occupied as a residence at his death passes under the devise, the property occupied as a residence at the time the will was executed having been sold in the meantime.

Annotation: Word "now" or other word of time in will as relating to date of execution of will or date of death of testator. 125 ALR 790.

Wills — *indefiniteness of antenuptial agreement.* In Re Friese, — Pa. —, 9 A (2d) 401, 125 ALR 1016, it was held that the promise to make a testamentary provision implied in an antenuptial contract whereby each of the parties agreed not to claim any part of the estate of the other except "the amount" given by such other's will is unenforceable for lack of definiteness.

Annotation: Antenuptial or postnuptial agreement whereby one party renounces all interest in estate of other except to the extent of provision made by latter's will, as affected by indefiniteness, unenforceability, or breach of the agreement as to provision to be made by will. 125 ALR 1021.

Wills — *provision against contest.* In Rossi v. Davis, — Mo —, 133 SW (2d) 363, 125 ALR 1111, it was held that the provision in a trust for the benefit of the members of the family of its creator after his death, that should any of the named beneficiaries unsuccessfully attempt to set the trust aside, the interest of the contestant should cease and his share should go to the other beneficiaries, is not invalid as against public policy, irrespective of whether there was probable cause for litigation as to the validity of the trust.

Annotation: Validity and applicability of provision of will or trust instrument forfeiting share of contesting beneficiary as affected by probable cause and good faith in contest. 125 ALR 1135.

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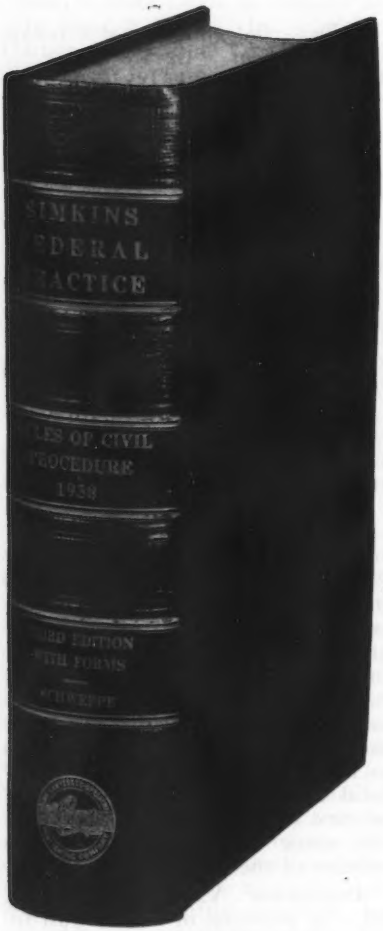

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THE HUMOROUS SIDE

Daze of Carry Nation. The petition in Turner v. Hitchcock (1866) 20 Iowa 310, charges and the testimony established that on the 2d day of July, 1864, a number of women in the town of Shell Rock, Butler County, Iowa, organized and made a raid or descent upon the saloon of the plaintiff, destroying ale, beer, glasses, oysters, candies, figs, etc. The action was brought against six of the women who with their husbands were made defendants. After the raid one of the women married one of the plaintiffs and the court held that such marriage was an implied release of the other joint tortfeasors.

Testators Beware. Heard over a quiz program from the stage of the Orpheum Theatre in Omaha, Nebr., via a radio broadcast of Sunday afternoon, Nov. 26th.

Question: What does it mean to die intestate?

Answer (by a member of the theatre audience selected at random): It means to have died from an intestinal disorder.

Contributor: Robert A. Schick,
Seward, Nebr.

Wives Beware. A client transmitted a letter of instructions to his lawyer. The instructions read: "Kindly execute all of these documents together with your wife, and have your signatures . . ."

I have advised my client to at least temporarily postpone the fulfillment of the directions.

A Novel Procedure. Recently, while a certain divorce cause, instituted by the wife, was pending in the local circuit court, the husband, untutored and considerably under the influence of intoxicating liquor, yet apparently having a vague idea of the course he desired taken, came to my office for consultation, with view of contesting the case; said he wanted to double cross his wife. I told him I would need time to look into the matter further; and requested him to call again. In the meantime, however, I have not seen him.

Contributor: Marshall Woolery,
Bedford, Ind.

Let the Buyer Beware. Contrary to the belief held in some quarters, "Truth in Advertising" is not an invention of the current administration in Washington. As proof we submit a newspaper advertisement run back in the '80's by a Toronto furrier:

I have a lot of 75 Grey Goat Sleigh Robes at $6.00 each.

They are grey, and they are goat, and they are six dollars, and that is about all I can truthfully say about them.

They are lined and trimmed, which is a circumstance, but if there is any worse lining in the country, I should be pleased to see it. Of course, with a raging Protectionist Government in power, people can't expect much for six dollars, and in this case I think their expectation will be realized.

P. S. The ad sold 60 of the 75 robes.

—*The Open Book.*

No Sale. Two salesmen introduced themselves to two attractive girls in a hotel lobby, as follows: "We're the Chesterfield boys, we are mild but we satisfy."

The two attractive girls replied coyly: "We're Piggly-Wiggly girls, we have everything, but don't deliver."

—*Book Mfg. Monthly.*

A Similarity. A young attorney was qualifying a witness as to the character of his client: "And do you know what her reputation is as to truthfulness, honesty, integrity and IMMORTALITY?" he blandly asked. His Honor hid his amazement and the

thought occurred that after all there might be a similarity in "morality" and "immortality" and that perhaps the young attorney could foresee for his client an "unending existence."

Contributor: William D. Shain,
Kansas City, Mo.

What! No Second! A few years ago two Columbus, Ohio, lawyers were representing a defendant in a justice of the peace court in a near-by rural community. After the plaintiff's opening statement, one of the Columbus attorneys said: "I move that this petition be dismissed."

The justice looked up and in all seriousness said: "Do I hear a second to this motion?"

Contributor: Warren E. Insley,
Columbus, Ohio.

North Carolina Justice. A few years ago Edenton had as its Mayor a very kindly and considerate southern gentleman. He ever tempered justice with mercy as the following narrative will illustrate.

There lived in his town a half wit by the name John S____, who at the time was dependent upon the charity of the Mayor fo his support. Whenever John got his hands on any money he would forthwith proceed to get drunk and go on a protracted debauch. The Mayor was at his wits' end—what to do with the problem was the bane of his official existence. He finally settled upon the expedient of having the Chief of Police hail John into court for a mock trial. John was of course found guilty of alcoholism and sentenced to thirty days in jail—judgment to be suspended upon showing good behavior for six months.

The Mayor in solemn manner lectured John on his misconduct and admonished him to become a total abstainer from then on.

Whereupon John looked the Mayor straight in the eye and said in clear and loud voice, "Your Honor, I think I will take a D____ Fool's advice for once."

Court immediately adjourned.

Contributor: J. H. McMullan,
Mayor.

Wanted Action. A very excited foreigner entered an adjoining law office and proceeded to try and explain his difficulties, becoming more and more unmanageable as he talked. After about ten minutes, the lawyer was finally able to get in a few words, which were as follows: "Well, in our business, we work differently than you do, I'll have to have a retainer." Whereupon, the prospective client yelled at the top of his voice, "Yes, that's what I want, *a retainer*, when I start something I want to finish it."

Needless to say, after the meaning of the word was explained, the would-be client was "Gone with the Wind."

Contributor: M. N. Jennings,
Springfield, Ill.

Unusual Lease Provision. In preparing a contract on February 10, 1940, covering the sale of an automobile body works situated in this city, at the request of the parties, I inserted the following quite unusual paragraph:

"It is further understood and agreed by and between the parties hereto that two bears now in hibernation in the building occupied by said body works, are to be and remain in the same place they now occupy in the wash rack in the building therein until said bears awaken from hibernation but in no event to so remain later than April 1, 1940."

In explanation, the seller owned two two-year-old brown bears which he kept in his place of business. They are great pets and as tame as dogs. They hibernate in captivity by going to sleep in the fall on the concrete wash rack, without covering and without bedding beneath them, and sleep without food or water until spring.

Contributor: Guy W. Von Schriltz,
Pittsburg, Kans.

A Hard Decision. In some of our townships in the deep south and southwest, the negro population is as high as ninety-five per cent, and in such townships the white planters usually elect a negro as the Justice of the Peace; such was the case in our county. The Justice of the Peace was named Frank Washington, and his idea of heavy punishment never exceeded $3.00 and *Court Costs*. After hearing the testimony against five negro defendants charged with carrying a pistol as a deadly weapon and the charge being proven by five or six defendants, each of whom had seen the pistols on the negroes, the old negro squire rendered this verdict: "The court finds from the testimony that the evidence ain't sufficient to convict the defend-

ants under the charge, but he finds that the proof is too strong to turn them loose, however, he *will turn them loose* if they pay the costs." The squire rolled his eyes around at the Prosecuting Attorney and said, "How's that, Mr. Prosecutor?" Since the Prosecuting Attorney received a fee of $5.00 on each charge, the decision was agreeable with the Prosecuting Attorney.

Contributor: J. D. Cook,
Texarkana, Ark.

For Sale. A Pennsylvania farm. A Hunter's Paradise—pheasants—ground-hogs—quail—now and then a fox—raccoon, etc.

Above all—it is a#1 as a Sanitarium site.

My father had a bad attach of T. B. at 27—got—from a first—wife.

Cured himself by living next to pine trees—by singing, and by barrels of old fashioned cod-liver oil.

And red-flannel shirts—even in summer! Lived to nearly 100. A triumph!

Contributor: John H. Cericola,
Easton, Pa.

Court Room Pun. During a hearing before an Examiner in Equity, the plaintiff's solicitor, while his client was being severely cross-examined, kept interjecting suggestions, in an obvious effort to help her out of a difficulty.

It had gone too far, and he was politely warned that it must stop. His reply was: "Sir, I was only thinking out loud." The Examiner's reply was: "Thinking allowed but not aloud."

Contributor: John S. Strahorn,
Annapolis, Md.

A Timid Miss. The stenographer was asked to telephone to the clerk's office and see if there was an appearance entered for the defendant and if there was to get his name. The clerk's reply was "pro se." The stenographer, being timid, asked for a repetition and got the same answer, so she wrote down, "The attorney for the defendant is Joe Fay."

Contributor: Marguerite Hatfield,
Lynn, Mass.

Drunk Must Hang—His Pants Securely. An elderly, unkempt man stood before Judge McMahon on charges of drunkenness. As he stood to be sentenced his belt broke and his trousers slipped to his knees.

"Take this man out back and get some rope," the Judge ordered. A bailiff took the prisoner out.

Another prisoner whispered hoarsely to his attorney: "For goodness sake, can they hang a man for that?"

Contributor: Leon A. Doughty,
Atlantic City, N. J.

Political Prejudice. On February 26, 1940, in the case of Missouri Pacific Railroad Company vs. Glidewell, the Supreme Court of Arkansas reversed and remanded for a new trial the said cause.

During the selection of the jury the following occurred: "Mr. Coffelt: Does Mr. Ryan represent you in any business matters or in any of his political matters? He belongs to the Republican Party."

The court admonished Mr. Coffelt but the Supreme Court ruled that the admonishment of the court was not sufficient to remove the prejudice.

Contributor: Maurine Branson,
Blytheville, Ark.

Partis Criminis. The following is a true story and I will vouch for it having happened in my office a few days ago:

An extremely sweet looking young lady of about nineteen came to my office recently in quest of a divorce and inquired as to the various grounds. I read them to her and one by one each failed to apply to her case. Finally when I came to adultery she inquired as to what the word meant. I explained it and she immediately brightened and said, "Oh, we can get the divorce on that ground." I advised that before starting suit we should have quite positive proof and asked if she had any real evidence of her husband having committed adultery. She looked at me with wide open eyes of surprise and disappointment and said, "Oh, I thought you meant me."

Contributor: Walter Norblad,
Astoria, Ore.

Never Trust Your Stenographer. The following complaint was filed in the District Court of the Tenth Judicial District of the State of Montana, in and for the county of Fergus:

"AS A second and further cause of action the sum of $41.15 is now due and owing from the defendants to this plaintiff and the said sum of wholy unpaid. Wherefore

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the plaintiff appraise judgment upon first cause of action in the sum of $84.50. And upon the second called to action for the sum of $37.80, and with costs and amusements where the expended, and all general relief upon the law and iniquity. This plaintiff will pray forever."

Contributor: Bert Replogle,
Lewiston, Mont.

Two Contributions from Chicago. A number of years ago I was retained to defend a man sued for divorce in our Circuit Court. When the case was called my client could not be found, and as I had been paid to make a defense, I decided to cross-examine the plaintiff. The evidence showed on cross-examination that they lived in Chicago, the husband was out of work and sat at his home desk writing a letter to a firm in Indiana asking for employment. His wife was determined not to move out of Chicago, and reached for and tore up the letter, and then her husband hit her in the mouth hard enough to cut her lip on her teeth. Said the Court: "Madam, your husband did not hit you hard enough, your bill is dismissed for want of equity."

On another occasion, three sisters induced their parents to send $700.00 out of the state so the parents could file for relief of themselves against the four sons in our county court. The sons then filed a petition in our Probate Court to have a conservator appointed for their aged parents, the father being 92 years old and on a pension, and the mother being 89 years old. They lived together and owned their home. After evidence had been received in support of the petition for the appointment of a conservator, the court called the aged father to the stand, and the following took place:

The Court: Mr. Blank, do you know what this case is about and why you are here?

The witness: Yes, your honor. My boys think I am incompetent, but if you will give me another young wife, I will raise seven more children.

The court denied the petition.

Contributor: W. T. Dickerman,
Chicago, Ill.

Trial by Jury.

How wonderful that men on juries
Seldom show their own home worries;
Can manage to contain blank faces
While judges try important cases;
Who often take slow-dozing naps,
Quite fitting while the gavel raps;
Are able to throw off their snoozing
Just when the case seems to be losing,
And then go off again to doze
Until the case will almost close;
It seems a tribute to our laws
That jury men don't get applause
For letting judges pass the sentence
WHILE MEN ON JURIES SLEEP REPENTANCE!

Contributor: Jonas Clifton,
Rochester, N. Y.

Descriptive! In reading the case of Durham v. Christ, 38 Pac. (2) 1055, I found that in describing the accident, the Supreme Court of Washington, said:

". . . carrying an umbrella over her left shoulder, and did not turn her head or look up; that he sounded his horn once and applied the brakes and prepared to stop; that she did not remove the umbrella from her left shoulder, but stopped and hesitated, giving him the impression that she was going to wait for him to pass; that he thereupon removed his foot from the brake, put on the throttle and began to pick up speed to go past her; that as he did so she started ahead again, walked directly in front of his car, and was struck before he could stop; that he stopped in about three or four feet after hitting her near the left front wheel and just west of the manhole in center of the intersection."

Contributor: Fred C. Gabriel,
Malta, Mont.

Fine Description. "Some time ago," writes a contributor, "a rather rich woman, who seems to have endless grievances and a martyr complex, called at my office for an appointment. My secretary made the engagement and then notified me by typewritten note as follows:

"'Mrs. ____ will come to the office at 2:00 p. m.

"'With tears in her eyes,
Reproach in her glance,
A sob in her voice,
And ants in her pants.'

"Because of the great accuracy in the description as well as the poetic polish of the lines, it seems to me that this should not be lost to the profession."

—Anonymous.

Estates By. At a bankruptcy hearing not so long ago, the following took place at the first meeting of creditors for my client who was questioned among other things:

Q. "Do you have any expectancies?"

Client turned red in the face and blushingly answered, "Yes, in June."

Contributor: William A. Shaheen,
Flint, Mich.

Tempora Fugit. In the trial of Conner v. Detroit Terminal Ry. Co. 183 Mich 248, in 1914, over the location of a boundary line, the witness, after testifying he had lived in Detroit since 1871, was asked: "Did you, Mr. H. take a lease from John S. of the frontage part of claim 392 years ago?" This is remarkable, punctuation.

Contributor: Frank E. Whipple,
Detroit, Mich.

More about Bees. Minnesota has a law providing for the registration and inspection of all apiaries. Mr. Rolloff, the County Attorney of Chippewa County, recently wrote a letter to all the bee-keepers in the County advising them of the law, and requesting that they file the necessary registration certificate with the State Department.

The letter, putting the bee on the bee-keepers, brought swarms of replies. One of them buzzed as follows:

"Dear Sir In reply of yours mabey they sent me Blanks but I never got them—I havent kept Bees for several years had only one hive and the mice got into them and destroyed them I haint in the Buisness their is a sworme came heer and Croled in a muse hole and got up in to the actict and that is all plastered no way to get up their if they want tose bees they can have them. I haint going to set the house a Fire to get red of those bees. that would be Burning property gess I have ansered your questions I think."

Contributor: Clara V. Ronning,
Montevideo, Minn.

Tempus Fugit. The man from Dulce was standing on the car platform as the D. & R. G., narrow gauge, clattered to a wheezing stop in Santa Fe. It had been an arduous three day trip via the so-called "Chile Line" to the capital city and the passenger was thankful the journey was ended.

The jury term was about to commence and with glowering eye his honor looked over the talesmen. In offended dignity he inquired of one as to the whereabouts of his coat, being informed that the missing garment was at home.

In tones that resembled nothing more than the roaring of a preying lion, the inoffensive talesman was ordered to go home and get it. Sheepishly he departed from the courtroom to comply with the jurist's command.

On the sixth day after the events above chronicled and into the aforementioned courtroom, slunk the inoffensive talesman with his coat on.

"Where have you been for the past six days?" roared the Judge.

"Home, your honor, getting my coat," was the hesitant reply.

"Well, where in the name of Heaven is your home?" was his Honor's apoplectic inquiry.

"In Dulce, if your honor please."

Reputed to have actually occurred some thirty years ago.

Contributor: B. P. Wood,
Santa Fe, N. M.

When Hopes Revive. Our secretary took her dictation one day, and when she transcribed her shorthand notes she composed the following paragraph:

"As soon as I have a rejuvenation of Mr. Brown's case, I will notify you immediately of same."

It should have been adjudication instead of rejuvenation.

Contributor: Benjamin Madnick,
Asbury Park, N. J.

Help! Help! Help! Some time ago we had occasion to terminate a life estate in real property. Upon referring to the South Dakota Code of 1939, we found the following notation with respect to giving notice of hearing:

"Notice of such hearing must be given . . . by mailing by registered mail true copies of such order addressed to the life tenant, *and* to the heirs or heirs at law of the life tenant at their respective post office addresses. . . ."

The life tenant died in 1923. Will some kind attorney, better posted than we are, please advise us as to the probable post office address of the life tenant at the present time? Particularly when the letter must be registered.

Contributor: Marian J. Benthin,
Hayti, S. D.

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